UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

HECTOR NERI PLIEGO,

Petitioner-Plaintiff,

v.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security;

TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;

KENNETH GENALO, in his official capacity as Field Office Director of Enforcement and Removal Operations of the New York Office of U.S. Immigration and Customs Enforcement;

PAMELA BONDI, in her official capacity as U.S. Attorney General;

RAUL MALDONADO, Jr., in his official capacity as Warden of the Metropolitan Detention Center;

Defendant-Respondents

Civil Action No. _____

ORAL ARGUMENT REQUESTED

EXPEDITED HEARING REQUESTED

PETITION FOR A WRIT OF HABEAS CORPUS

INTRODUCTION

1. The U.S. Department of Homeland Security ("DHS"), through Immigration and Customs Enforcement ("ICE"), has been and is detaining Petitioner Hector Neri Pliego ("Mr. Neri Pliego" or "Petitioner") at the Metropolitan Detention Center ("MDC"), a federal incarceration facility located within this District, in violation of his statutory and constitutional rights. This Petition seeks Mr. Neri Pliego's immediate release from detention.

2. Mr. Neri Pliego is a 50-year-old native of Mexico who has lived in the United States for almost 30 years. His family is primarily comprised of U.S. citizens including his [redacted] biological U.S. citizen son, U.S. citizen partner, her [redacted] U.S. citizen daughter, and her [redacted] U.S. citizen son. Mr. Neri Pliego has raised and supported his partner's children as if they were his own since they were very young.

3. On September 27, 2025, Mr. Neri Pliego was detained by ICE near his home in Newburgh, New York, on his way to work. Mr. Neri Pliego was initially detained by ICE at the Orange County Correctional Facility ("OCCF") in Goshen, New York, and was then transferred on or around October 7, 2025 to the MDC in Brooklyn, New York. Mr. Neri Pliego remains there to this day.

4. On December 23, 2025, Mr. Neri Pliego's Motion for Reconsideration for a bond hearing was denied by the Varick Immigration Court on the grounds that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), held as a matter of law that all aliens present in the United States without admission may only be subject to 8 U.S.C. § 1225(b), a section of the federal immigration law that does not contemplate the possibility of bond, rather than 8 U.S.C. § 1226, a section that does allow for bond.

5. Mr. Neri Pliego's continued detention is unlawful for three overarching reasons.

6. First, ICE's continued detention of Mr. Neri Pliego without a bond hearing violates the plain language of the Immigration and Nationality Act ("INA"). As a noncitizen physically present in the United States, Mr. Neri Pliego's detention can only be governed by 8 U.S.C. § 1226 (hereinafter "Section 1226"). Critically, Section 1226(a) permits the discretionary detention of only noncitizens present in the country who receive an individualized determination of their potential for posing a flight risk or danger to the community. Because Mr. Neri Pliego has not received such determination, his continued detention is unlawful. He must be afforded a prompt bond hearing and an individualized custody determination by a neutral decisionmaker pursuant to Section 1226(a), or he must be released immediately.

7. ICE maintains that anyone who entered the country without inspection is subject to Section 1225, which requires detention without the possibility of bond, rather than Section 1226. This view was confirmed by the Board of Immigration Appeals ("BIA") in the *Matter of Yajure Hurtado*. ICE's position has no basis in law or fact, and numerous district courts across the country have rejected the government's position.[1] Section 1225 applies to noncitizens "seeking admission"

[1] *See, e.g.*, *Hyppolite v. Noem*, No. 25-cv-4304 (NRM), 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) (granting habeas petition); *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *4–8 (E.D.N.Y. Oct. 5, 2025) (granting habeas petition); *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765, at *4–9 (E.D.N.Y. Sept. 29, 2025) (granting habeas petition); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (granting habeas petition); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 483–492 (S.D.N.Y. 2025) (granting habeas petition); *B.D.V.S. v. Forestal*, No. 25-cv-1968, 2025 WL 2855743, at *2 (S.D. Ind. Oct. 8, 2025) (granting habeas petition); *Eliseo A.A. v. Olson*, No. 25-cv-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025) (granting habeas petition); *Mena Torres v. Wamsley*, No. 25-cv-5772, 2025 WL 2855379, at *3–4 (W.D. Wash. Oct. 8, 2025) (granting preliminary injunction); *Ledesma Gonzalez v. Bostock*, No. 25-cv-1404, 2025 WL 2841574, at *2–4 (W.D. Wash. Oct. 7, 2025) (granting habeas petition); *Cordero Pelico v. Kaiser*, No. 25-cv-7286, 2025 WL 2822876, at *7–15 (N.D. Cal. Oct. 3, 2025) (granting preliminary injunction); *Echevarria v. Bondi*, No. 25-cv-3252, 2025 WL 2821282, at *4–10 (D. Ariz. Oct. 3, 2025) (granting preliminary injunction); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *2–3 (D. Mass. Oct. 3, 2025) (granting habeas petition); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *4–9 (D. Mass. Oct. 3, 2025) (granting preliminary injunction); *Ayala Casun v. Hyde*, No. 25-cv-427, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025) (granting habeas petition); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5–7 (D. Minn. Oct. 1, 2025) (granting habeas petition); *Santiago Helbrum v. Williams*, No. 25-cv-349, 2025 WL 2840273, at *4–7 (S.D. Iowa Sept. 30, 2025) (granting habeas

to the United States while Section 1226 applies to noncitizens who are "already in the country." Mr. Neri Pliego, who has resided in the United States for nearly 30 years and was arrested near his home, plainly falls in the latter category. In fact, DHS's own language reflects this as they classified Mr. Neri Pliego as "an alien present in the United States who has not been admitted or paroled" as opposed to "an arriving alien." *See* Notice to Appear dated Sept. 27, 2025, at 1, attached hereto as **Exhibit 1**.

8. Second, Mr. Neri Pliego's continued detention is a blatant violation of a recent order entered in *Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873, 2025 WL 3289861 (C.D. Cal. Nov.

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petition in part); *Quispe-Ardiles v. Noem*, No. 25-cv-1382, 2025 WL 2783800, at *4–7 (E.D. Va. Sept. 30, 2025) (granting habeas petition); *Alves da Silva v. ICE*, No. 25-cv-284, 2025 WL 2778083, at *3 (D.N.H. Sept. 29, 2025) (granting habeas petition); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *4–6 (E.D. Va. Sept. 29, 2025) (granting habeas petition); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *4–9 (D. N.J. Sept. 26, 2025) (granting habeas petition); *Hernandez Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (granting preliminary injunction); *Brito Barrajas v. Noem*, No. 25-cv-322, 2025 WL 2717650, at *3–5 (S.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427, at *4–5 (N.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Guerrero Lepe v. Andrews*, No. 25-cv-1163, 2025 WL 2716910, at *3–9 (E.D. Cal. Sept. 23, 2025) (granting preliminary injunction); *Sanchez Roman v. Noem*, No. 25-cv-1684, 2025 WL 2710211, at *5–7 (D. Nev. Sept. 23, 2025) (granting preliminary injunction); *Chogllo Chafla v. Scott*, No. 25-cv-437, 2025 WL 2688541, at *7 (D. Me. Sept. 22, 2025) (granting preliminary injunction); *Campos Leon v. Forestal*, No. 25-cv-1774, 2025 WL 2694763, at *2–3 (S.D. Ind. Sept. 22, 2025) (granting habeas petition); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) (granting habeas petition); *Beltran Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2–4 (W.D. Ky. Sept. 19, 2025) (granting habeas petition); *Hasan v. Crawford*, 800 F. Supp. 3d 641, 651–57 (E.D. Va. 2025) (granting habeas petition); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082, at *11–23 (D. Nev. Sept. 17, 2025) (granting preliminary injunction); *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025) (granting habeas petition); *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025) (granting habeas petition in part); *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *7–12 (N.D. Cal. Sept. 12, 2025) (granting preliminary injunction); *Hernandez Marcelo v. Trump*, No. 25-cv-94, 2025 WL 2741230, at *6–8 (S.D. Iowa Sept. 10, 2025) (granting preliminary injunction in part); *Cuevas Guzman v. Andrews*, No. 25-cv-1015, 2025 WL 2617256, at *3–5 (E.D. Cal. Sept. 9, 2025) (granting preliminary injunction); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4–8 (E.D. Mich. Sept. 9, 2025) (granting habeas petition); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *7–8 (D. Mass. Sept. 9, 2025) (granting habeas petition); *Zaragoza Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025) (granting preliminary injunction); *Doe v. Moniz*, No. 25-cv-12094, 2025 WL 2576819, at *4–6 (D. Mass. Sept. 5, 2025) (granting habeas petition); *Hernandez Nieves v. Kaiser*, No. 25-cv-692, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025) (granting preliminary injunction).

20, 2025) ("*Maldonado Bautista I*"), which applies to Mr. Neri Pliego. *Maldonado Bautista I* considered ICE's novel reinterpretation of decades-old law to justify holding any person who entered the United States without inspection in mandatory detention without a bond hearing. *Maldonado Bautista I* rejected ICE's interpretation. In a separate order, the court extended *Maldonado Bautista I* to a certified nationwide class, which includes Mr. Neri Pliego. *See Maldonado Bautista v. Santacruz*, No. 5:25-cv-1873, 2025 WL 3288403 (C.D. Cal. Nov. 25, 2025) ("*Maldonado Bautista II*"). The court later explicitly entered a final judgment holding that the certified class is not subject to mandatory detention. *See Maldonado Bautista v. Noem*, No. 5:25-CV-01873, 2025 WL 3678485, at *1 (C.D. Cal. Dec. 18, 2025) ("*Maldonado Bautista III*"). Notwithstanding this clear directive, ICE and the Executive Office for Immigration Review ("EOIR") have refused to comply with *Maldonado Bautista*. On January 16, 2026, Chief Immigration Judge Teresa L. Riley issued guidance to all immigration judges that *Maldonado Bautista* "is not a nationwide injunction and does not purport to vacate, stay or enjoin *Yajure Hurtado*." *See* Am. Immigration Lawyers Assoc., *Practice Alert: EOIR Issues Nationwide Guidance on* Maldonado Bautista (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista. The guidance from EOIR claims that a declaratory judgment is not binding and has no authority to compel specific action. *See id.* ICE and EOIR's position is meritless. Mr. Neri Pliego is a member of the *Maldonado Bautista* class, as he entered the United States without inspection, so he is entitled to a bond hearing pursuant to *Maldonado Bautista I* and *II*. EOIR's refusal to provide such a hearing violates the requirements established by the *Maldonado Bautista* orders.

9. Finally, Mr. Neri Pliego's continued detention violates his Fifth Amendment right to due process. ICE failed to conduct an individualized review in detaining Mr. Neri Pliego, depriving him of any meaningful legal process.

10. Mr. Neri Pliego has suffered irreparable harm from his unlawful detention as he is deprived of his freedom, his ability to provide for his family, and his ability to be with friends and family who depend on him. Every day that Mr. Neri Pliego remains detained, he suffers further irreparable harm.

JURISDICTION & VENUE

11. "Federal courts have jurisdiction to review habeas petitions filed by immigration detainees who assert that they are 'in custody in violation of the Constitution or laws or treaties of the United States.'" *J.U.*, 2025 WL 2772765, at *3 (quoting 28 U.S.C. § 2241(c)(3)).

12. Mr. Neri Pliego was detained by Respondents on September 27, 2025. He is currently detained at MDC.

13. This Court has subject matter jurisdiction over this Petition pursuant to U.S. Const. art. I, § 9, cl. 2 (habeas corpus); 28 U.S.C. § 2241, *et seq.* (habeas corpus); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1651 (All Writs Act).

14. This Court has authority to grant declaratory and injunctive relief, 28 U.S.C. §§ 2201, 2202, and to issue and enforce the writ of habeas corpus, U.S. Const. art. I, § 9, cl. 2 and 28 U.S.C. § 1651.

15. Respondents have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

16. Venue is proper in this District pursuant to 28 U.S.C. § 2241(d) (stating that "the application [for habeas corpus] may be filed in the district court for the district wherein such person

is in custody"); 28 U.S.C. § 1391(b)(2) (stating that venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"). Venue is proper in this District because Mr. Neri Pliego is presently detained within this District and because a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this District.

17. To the extent Respondents may transfer Mr. Neri Pliego outside this District, such transfer would be undertaken to defeat this Court's jurisdiction. The Court retains authority to enjoin any such transfer and to order Mr. Neri Pliego's release. *See, e.g.*, *Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2-3 (S.D.N.Y. June 13, 2025) (enjoining a habeas petitioner's transfer pending adjudication of his petition); *Guarchaj v. Genalo*, No. 26-CV-00889, 2026 WL 279831, at *1 (S.D.N.Y. Feb. 2, 2026) (ordering that habeas petitioner not be transferred); *D.W. v. Almodovar*, No. 1:26-00760, 2026 WL 235164, at *1 (S.D.N.Y. Jan. 29, 2026) (same); *J.U.*, 2025 WL 2772765, at *10 (granting habeas petition and ordering release); *Hyppolite*, 2025 WL 2829511, at *17 (granting habeas petition and citing court's earlier order to release petitioner).

18. A court hearing a petition for a writ of habeas corpus must issue the writ or an order to show cause to the Respondents "forthwith." 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require the Respondents to respond "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

PARTIES

19. Petitioner Hector Neri Pliego is a 50-year-old Mexican national who has lived in the United States for almost 30 years. He was arrested and detained by ICE without a warrant on September 27, 2025. Mr. Neri Pliego is presently detained at MDC in Brooklyn, New York, in this District.

20. Respondent Kristi Noem is named in her official capacity as the Secretary of the U.S. Department of Homeland Security. In this capacity, Secretary Noem is responsible for the administration of immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), she routinely transacts business in the Eastern District of New York, she supervises Respondents Lyons and Genalo, she is legally responsible for the pursuit of Mr. Neri Pliego's detention and removal, and, as such, is a legal custodian of Mr. Neri Pliego. Respondent Noem's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

21. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Lyons is responsible for administration of the immigration laws pursuant to Section 103(a) of the INA, 8 U.S.C. § 1103(a), he routinely transacts business in the Eastern District of New York, he supervises Respondent Genalo, he is legally responsible for the pursuit of Mr. Neri Pliego's detention and removal, and, as such, is a legal custodian of Mr. Neri Pliego. Respondent Lyons's office is located at the U.S. Department of Homeland Security, 500 12th Street SW, Washington, D.C. 20528.

22. Respondent Kenneth Genalo is named in his official capacity as Field Office Director of Enforcement and Removal Operations of the New York Office of U.S. Immigration and Customs Enforcement. In this capacity, Respondent Genalo is responsible for the administration of immigration laws and execution of detention and removal determinations and, as such, is a legal custodian of Mr. Neri Pliego. Respondent Genalo's office is located at 26 Federal Plaza, New York, NY 10278.

23. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. In this capacity, Attorney General Bondi is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review, including

immigration courts and the Board of Immigration Appeals, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Mr. Neri Pliego's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington D.C. 20530.

24. Respondent Raul Maldonado, Jr. is named in his official capacity as Warden of the MDC, a federal incarceration facility located within this District where Mr. Neri Pliego is currently detained. In his capacity as Warden, Respondent Maldonado oversees the administration and management of MDC, and, as such, is a legal custodian of Mr. Neri Pliego. His business address is 80 29th St, Brooklyn, NY 11232.

FACTS AND PROCEDURAL BACKGROUND

I. Mr. Neri Pliego's Life in the United States

25. Mr. Neri Pliego has resided in the United States continuously since he entered almost 30 years ago, in or around 1998. *See* Declaration of Daad Sharfi, attached hereto as **Exhibit 2**. He is a loving and supportive father to a [redacted] U.S. citizen son for whom he provides. *See id.* ¶ 4. The rest of his family is also primarily comprised of U.S. citizens – his U.S. citizen partner and mother of his son (Jomaira), as well as Jomaira's [redacted] U.S. citizen daughter and [redacted] U.S. citizen son whom Mr. Neri Pliego has raised and supported as his own children since they were very young. *See id.*

26. Mr. Neri Pliego has provided immense financial and emotional support to his family. *See* Declaration of Jomaira Meza, attached hereto as **Exhibit 3**. Mr. Neri Pliego has worked various jobs to support his family: as a taxi driver with Jomaira, under the employment of an interior renovations and construction company, and most recently as a self-employed

independent contractor. *See* Jomaira Meza Decl. ¶ 2; *see also* Form EOIR 42B, attached hereto as **Exhibit 14**, at page 3. Prior to being detained, he picked his children up from school, attended parent-teacher conferences, paid the bills, took care of [redacted] and assisted in any other way necessary. [redacted] Mr. Neri Pliego has been a steady father figure for his entire family. *See id.*

27. Since living in the United States, Mr. Neri Pliego has been an upstanding member of society. Mr. Neri Pliego has no criminal convictions. His only contact with the criminal justice system was on or around April 12, 2015, which resulted in two non-criminal violations: a disorderly conduct violation under N.Y.P.L. § 240.20 and a traffic law violation under V.T.L. § 1201(0A). *See* Arrest Records, attached hereto as **Exhibit 4**. Mr. Neri Pliego pleaded guilty to both offenses on April 30, 2015, and fully paid off the fines associated with each on June 2, 2015. *See id.* Mr. Neri Pliego has had no further contact with law enforcement since these violations over 10 years ago. *See* Criminal History Record Search, attached hereto as **Exhibit 5**.

28. As a result of Mr. Neri Pliego's detention, his family has suffered significant hardship. His [redacted] U.S. citizen son now suffers from [redacted] *See* Psychological Evaluation of Mr. Neri Pliego's Son, attached hereto as **Exhibit 6**. He has become more irritable, distracted in school, and isolated since his father's detention. *See* Jomaira Meza Decl. ¶¶ 9–11. He cries almost every day now and no longer gets joy from his favorite activities of life. *See id.* Additionally, Jomaira feels that she is suffering from depression. *See id.* ¶ 12. The stress from Mr. Neri Pliego's detention has made her physically sick—as one example, she suffered from a migraine while testifying at Mr. Neri Pliego's most recent immigration hearing. *See* Daad Sharfi Decl. ¶ 19.

29. As mentioned above, Mr. Neri Pliego is the primary source of financial support for the family. *See id.* ¶¶ 20-21. Since his detention, Jomaira's landlord has threatened to evict her and the children due to late rent payments. *See id.* ¶ 20. Although Jomaira brought in what she could as a taxi driver, she has been unable to do so recently due to mounting bills and, without Mr. Neri Pliego contributing to the household, Jomaira was forced to redirect funds that would go towards the required taxi car insurance, thereby preventing her from working her full-time job. *See id.* ¶ 21. Jomaira has been working part time, but without Mr. Neri Pliego's financial assistance, the family has had to limit their grocery intake and they have lost their internet access. *See id.* ¶ 20.

II. ICE Unlawfully Arrests and Detains Mr. Neri Pliego

30. On September 27, 2025, ICE detained Mr. Neri Pliego near his home in Newburgh, New York, while he was on his way to work. *See* Ex. 14, Form EOIR 42B; *see also* Daad Sharfi Decl. ¶ 5. Mr. Neri Pliego was initially detained by ICE at the OCCF in Goshen, New York, and was then transferred on or around October 7, 2025 to the MDC in Brooklyn, New York. *See* Daad Sharfi Decl. ¶ 6. Mr. Neri Pliego remains there to this day.

31. Conditions at MDC are dire. MDC is notorious for its "barbaric," violent, unsanitary, unsafe, and inhumane conditions, in which detainees like Mr. Neri Pliego are held alongside criminal detainees in conditions akin to solitary confinement. *See* Katie Rose Quandt and Maeve Brennan, *Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for its Famous Detainees*, The Appeal (June 30, 2025), https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/. MDC guards regularly mistreat the detainees, restrict them to their cells when they are not supposed to, and ignore their requests for medical attention. *See id.*

32. Mr. Neri Pliego has faced immense stress during his detention at MDC, impacting his mental and physical health. *See* Declaration of Megi Belegu, attached hereto as **Exhibit 13,** at ¶ 4. On top of the other poor conditions noted above, Mr. Neri Pliego has been subjected to sporadic lockdowns which keep him confined in his small cell. *See id.* ¶ 5. These lockdowns last for unspecified periods of time with no indication of when they will end – some last for hours, and in other cases, for days. *See id.* In one instance, Mr. Neri Pliego was forced to spend three days in his cell during a lockdown, unable to shower or get any physical activity. *See id.* ¶ 6.

33. Mr. Neri Pliego's physical health has also deteriorated during his detention. *See* Daad Sharfi Decl. ¶ 22. Over the past one or one and half months, Mr. Neri Pliego has experienced swelling and pain in both of his feet, as well as pain in his shoulders, wrists, and knees, which he never experienced prior to his detention at MDC. *See id.*; *see also* Megi Belegu Decl. ¶ 7. Due to these joint pains, Mr. Neri Pliego's movement is limited and he is forced to use the bottom bunk because he cannot easily access the top bunk. *See* Megi Belegu Decl. ¶ 8. Mr. Neri Pliego has made repeated requests to be examined by a medical professional at MDC to no avail. *See* Daad Sharfi Decl. ¶ 22. As of today, Mr. Neri Pliego still has not been examined by a medical professional to address his pain. *See id.*; *see also* Megi Belegu Decl. ¶ 9.

III. ICE Reinterprets the INA and *Maldonado Bautista* Grants Class-Wide Relief

34. ICE has been broadly citing to a newly adopted legal theory first articulated in an internal ICE memorandum dated July 8, 2025, and subsequently endorsed by the BIA in *Yajure Hurtado*. *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-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance).

35. This novel and legally unsupported policy from DHS would attempt to subject *all* persons with long-term presence in the interior to mandatory detention. ICE's new policy and the BIA's subsequent decision in *Yajure Hurtado* represent the government's erroneous attempt to apply § 1225(b)(2)(A) to all noncitizens, rather than a small subset of noncitizens "seeking admission" to the United States. This theory has no basis in law, and in the time since the BIA decided *Yajure Hurtado*, a steadily increasing number of district courts across the country have explicitly rejected its holding. *See supra* n.1.

36. What's more, on November 20, 2025, the U.S. District Court for the Central District of California held that the BIA's decision in *Yajure Hurtado* does not foreclose the custody redetermination of certain noncitizen petitioners who entered the United States without inspection and are subject to Section 1226(a). *See Maldonado Bautista I*, 2025 WL 3289861. The Court extended this decision on November 25, 2025, to a "Bond Eligible Class" defined as:

> All noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination.

Maldonado Bautista II, 2025 WL 3288403, at *9.

37. Mr. Neri Pliego fits squarely in the class, as he entered the United States without inspection almost 30 years ago, was not apprehended upon arrival, and is not subject to detention under Sections 1226(c), 1225 (b)(1), or 1231.

IV. ICE and EOIR Defy *Maldonado Bautista I* and *II* and Refuse to Provide Mr. Neri Pliego a Bond Hearing

38. On November 25, 2025, following the ruling in *Maldonado Bautista I*, Mr. Neri Pliego's attorney moved for a bond hearing with the immigration court. *See* Notice of Bond Hearing dated November 26, 2025, attached hereto as **Exhibit 7**. After the bond hearing was re-

scheduled for December 12, 2025, the immigration judge ("IJ") denied bond, ruling that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) remained in effect and the IJ did not have jurisdiction over Mr. Neri Pliego's bond proceedings. *See* Order of the Immigration Judge (Ouslander, I.J.), dated Dec. 12, 2025, attached hereto as **Exhibit 8**.

39. On December 18, 2025, *Maldonado Bautista* entered an order, issuing a final judgment making clear that all class members, including persons like Mr. Neri Pliego, are entitled to benefit from the declaratory judgment and are eligible for a bond hearing. *See Maldonado Bautista III*, 2025 WL 3678485, at *1.

40. On December 19, 2025, Mr. Neri Pliego's attorney filed a Motion for Reconsideration in immigration court, requesting a new bond hearing in light of the final judgment in *Maldonado Bautista III*. *See* Respondent's Motion For Reconsideration and Custody Redetermination Hearing Due To Final Judgment In *Maldonado Bautista*, attached hereto as **Exhibit 9**.

41. On December 23, 2025, the immigration court denied the Motion for Reconsideration, maintaining that it lacks jurisdiction over Mr. Neri Pliego's bond proceedings despite the final judgment in *Maldonado Bautista III*. *See* Order of the Immigration Judge (Ouslander, I.J.), dated Dec. 23, 2025, attached hereto as **Exhibit 10**.

LEGAL FRAMEWORK

I. Mr. Neri Pliego's Detention is Unlawful

42. Mr. Neri Pliego may succeed on the merits by showing that either his statutory or constitutional rights have been violated. *See e.g.*, *J.U.*, 2025 WL 2772765, at *10 (ruling that, in a similar case, petitioner's detention was illegal based on both theories); *Savane v. Francis*, 801 F. Supp. 3d 483, 490–95 (S.D.N.Y. 2025) (ruling that, in a similar case, irrespective of the applicable detention provision, petitioner's right to due process had been violated); *Guartazaca Sumba v.*

Crowley, No. 25-cv-13034, 2025 WL 3126512, at *5 (N.D. Ill. Nov. 9, 2025) (ruling that, in a similar case, petitioner's statutory rights had been violated and the due process argument need not be considered). Here, both Mr. Neri Pliego's statutory and constitutional rights have been violated.

a. Mr. Neri Pliego's detention is unlawful under the INA

43. The INA authorizes civil immigration detention under two separate provisions, 8 U.S.C. § 1225 and 1226. *See Jennings v. Rodriguez*, 583 U.S. 281, 287–89 (2018).

44. Section 1225(b) requires mandatory detention of certain noncitizens who are "seeking admission" to this country. 8 U.S.C. § 1225(b)(2)(A) ("[I]f 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 . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that 8 U.S.C. § 1225 applies to an alien *seeking admission* into the country") (emphasis added). The only exception to detention under this section is temporary parole under 8 U.S.C. § 1182(d)(5)(A) for humanitarian reasons or public benefit.

45. By contrast, Section 1226(a), provides discretionary authority to the government to detain noncitizens who are already in the country only after an individualized bond hearing to determine the individual's potential for posing a flight risk or danger to the community. 8 U.S.C. § 1226(a) ("[A]n alien *may be* arrested and detained pending a decision on whether the alien is to be removed . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that Section 1226 "authorizes the Government to detain certain aliens *already in the country* pending the outcome of removal proceedings") (emphasis added).

46. Seeking to justify its improper action, ICE concocts an argument that it has detained Mr. Neri Pliego pursuant to Section 1225. *See* Daad Sharfi Decl. ¶ 7. This position is pretextual and baseless. Mr. Neri Pliego lived in the United States for almost 30 years before his arrest. *See* Daad Sharfi Decl. ¶ 4. "As noted, § 1226 applies to aliens already present in the United States."

Jennings, 583 U.S. at 303. Because he was unquestionably "already present in the United States"—and has been for decades— Mr. Neri Pliego's detention can be pursuant only to Section 1226. This is further evidenced by DHS's own language within Mr. Neri Pliego's Notice to Appear. *See* Ex. 1, Notice to Appear. There, DHS designated him as "an alien *present in the United States* who has not been admitted or paroled" as opposed to "an arriving alien." *Id.* (emphasis added). Therefore, DHS's own classification of Mr. Neri Pliego admits he is a noncitizen who is "already present in the United States."

47. ICE contests this conclusion, reinterpreting the settled understanding of the INA based on a July 8, 2025 internal agency memorandum, which was subsequently endorsed by the BIA in *Matter of Yajure Hurtado* 29 I. & N. Dec. 216 (BIA 2025). See *ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws Ass'n (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of ICE Memo announcing interim guidance).

48. ICE's new interpretation of the statutory scheme is contrary to longstanding binding precedent. *See J.U.*, 2025 WL 2772765, at *8 (holding that "Respondent's interpretation of the statutory scheme does not square with more than a century of Supreme Court's holdings interpreting the relationship between §§ 1225(b) and 1226(a)"). As far back as 1958, the Supreme Court held that "our immigration laws have long made a distinction between those aliens 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 Ma v. Barber*, 357 U.S. 185, 187 (1958). "In the latter instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Id.* (citations omitted). "The

distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

49. In *Jennings*, the Supreme Court reaffirmed this principle, stating that Section 1225(b) governs "aliens seeking admission into the country" whereas Section 1226(a) governs "aliens already in the country." 583 U.S. at 289; *see also J.U.*, 2025 WL 2772765, at *8. In light of this history, this Court should treat this newfound "assertion of a 'previously unheralded power' to detain non-citizens present in the United States under Section 1225(b)(2)(A) with 'a measure of skepticism.'" *Martinez v. Hyde*, 792 F. Supp. 3d 211, 222 (D. Mass. 2025) (quoting *W. Virginia v. Env't Prot. Agency*, 597 U.S. 697, 748 (2022)).

50. *Matter of Yajure Hurtado* is not just inconsistent with prior interpretations of the law but further represents a radical departure from decades of practice and understanding of Section 1225. Accordingly, it is particularly unpersuasive in light of the immigration courts' consistent prior statements and actions to the contrary. See *Matter of 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."); *Martinez*, 792 F. Supp. 3d at 222 (discussing prior BIA decisions "clearly holding that the detention of a non-citizen arrested within the United States is governed under section 1226, rather than section 1225"); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (same).

51. In the months since Respondents began to broadly invoke section 1225(b)(2)(A) to justify mandatory detention of noncitizens who already reside within the United States, an even

greater number of district courts have rejected that illogical interpretation of the INA. See *Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) ("[T]he administration's new position . . . has been challenged in at least 362 cases in federal district courts. The 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."); *Y- C- v. Genalo*, No. 25-CV-06558, 2025 WL 3653496, at *2 (E.D.N.Y. Dec. 17, 2025) ("Within the Eastern District of New York, at least six judges have considered the issue in the last three months and have unanimously rejected the government's interpretation.") (collecting cases); *see also supra* n.1 (listing cases).

52. Even setting aside the numerous decisions rejecting their argument, "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. 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 this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "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. 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.* (citation omitted) (collecting cases holding same).

53. Interpreting the statute's words "in their context and with a view to their place in the overall statutory scheme," as courts are required to do, further undermines Respondents' position. *See King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted); *see also Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 290 (2010) (stating that the court's duty is to "construe statutes, not isolated provisions") (citation omitted). "In considering § 1225(b)(2)(A) within its statutory context, it was clearly intended to apply to noncitizens who are presently seeking to enter the United States, and not those . . . who have lived in the country for almost three years." *Hyppolite*, 2025 WL 2829511, at *9. Section 1225(b)(2)(A) is subject to subparagraphs (B) and (C), which set out specific detention exceptions and rules for "crewm[e]n", "stowaway[s]", and aliens "arriving" on land. This statutory construction makes it clear that "seeking admission" in Section 1225 "is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"—not those like Mr. Neri Pliego who have been present for years. *Hyppolite*, 2025 WL 2829511, at *9.

54. Furthermore, it is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). If an interpretation of one provision "would render another provision superfluous[,]" courts presume that interpretation is incorrect. *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "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). Under ICE's newfound theory, nearly all noncitizens in the United States not previously admitted or who entered without inspection are suddenly subject to mandatory detention pursuant to Section 1225(b). But if that were correct, then it would render superfluous

numerous provisions of the same statutory scheme, including Sections 1226(c)(1)(A), (D), and (E).

55. Section 1226(c)(1)(A) provides that the "Attorney General shall take into custody any alien who is inadmissible by reason of having committed any offense covered in section 1182(a)(2) of this title," such as crimes of moral turpitude and offenses relating to controlled substances. 8 U.S.C. § 1226(c)(1)(A). "[T]his mandatory detention under § 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Hasan*, 800 F. Supp. 3d at 656; *J.U.*, 2025 WL 2772765, at *8 (same).

56. Section 1226(c)(1)(D) provides that the "Attorney General shall take into custody any alien who is inadmissible under section 1182(a)(3)(B) of this title or deportable under section 1227(a)(4)(B) of this title," which include aliens engaged in terrorist activities. Again, "this mandatory detention under Section 1226(c) would be unnecessary if all persons who have not been admitted into the United States were already subject to Section 1225(b)'s mandatory detention provisions." *Hasan*, 800 F. Supp. 3d at 656; *J.U.*, 2025 WL 2772765, at *8 (same).

57. Section 1226(c)(1)(E)—added by amendment just last year via the enactment of the Laken Riley Act—makes certain noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182, and (2) they are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), *abrogation recognized on other grounds*, *Riley v. Bondi*, 606 U.S. 259 (2025). Yet, "if § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding [the provisions of

the Laken Riley Act] to the statutory scheme was pointless." *Hyppolite*, 2025 WL 2829511, at *10 (quoting *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)). ICE's theory that Section 1225(b) applies to practically every noncitizen who entered without inspection and was then arrested while residing in the United States, regardless of whether they committed any crime, would make Section 1226(c)(1)(E)'s criminal conduct requirement entirely superfluous. *Id.*; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025).

58. To summarize, Mr. Neri Pliego, who has lived in the United States for almost 30 years and was not "seeking admission" at the time of his arrest, is plainly being detained pursuant to Section 1226(a), which entitles him to a bond hearing. Respondents' argument that Mr. Neri Pliego is being detained pursuant to Section 1225(b)(2)(A) is inconsistent with the plain language of the statute, settled case law, and EOIR's own prior interpretations of the law. Respondents' continued detention of Mr. Neri Pliego violates the INA and is therefore unlawful.

59. ICE's novel interpretation of the INA is contrary to binding precedent, numerous other cases considering this same argument, and basic principles of statutory interpretation. This Court should join the overwhelming majority of district courts and reject ICE's argument.

b. Mr. Neri Pliego's detention violates *Maldonado Bautista*

60. Mr. Neri Pliego clearly falls within the class defined in *Maldonado Bautista II*, and Respondents are bound by the court's judgment, as it has the full "force and effect of a final judgment." 28 U.S.C. § 2201(a). Indeed, the court later entered an explicit final judgment. *See Maldonado Bautista III*, 2025 WL 3678485, at *1. Nevertheless, Respondents continue to flagrantly defy the judgment in that case and continue to subject Mr. Neri Pliego to unlawful detention despite his clear entitlement to consideration for release on bond as a Bond Eligible Class member.

61. Consistent with EOIR practice around the country, the immigration judge overseeing Mr. Neri Pliego's immigration proceedings denied his Motion for Reconsideration of bond, arguing that the *Maldonado Bautista* court order "is not an injunction and does not purport to vacate, stay, or enjoin *Matter of Yajure Hurtado*." *See* Ex. 10, Dec. 23, 2025 Order of the Immigration Judge.

62. EOIR is flatly wrong. *Maldonado Bautista II* explicitly "extends the same declaratory relief granted to Petitioners [in *Maldonado Bautista I*] to the Bond Eligible Class as a whole." *Maldonado Bautista II*, 2025 WL 3288403, at *9. The *Maldonado Bautista* court later explicitly entered a final judgment declaring that "the Bond Eligible Class members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under § 1225(b)(2)." *Maldonado Bautista III*, 2025 WL 3678485, at *1. EOIR's refusal to comply with *Maldonado Bautista's* requirements—and thus Mr. Neri Pliego's continued detention—is therefore unlawful.

c. Mr. Neri Pliego's detention violates the Due Process Clause of the Fifth Amendment

i. Mr. Neri Pliego's detention violates his procedural due process rights

63. Mr. Neri Pliego is detained in violation of his procedural due process rights under the Fifth Amendment.

64. The Due Process Clause of 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.

65. In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the

Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

66. Here, the *Mathews* test strongly supports Mr. Neri Pliego's claim to a procedural due process violation. *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *12–16 (finding procedural due process violation in similar circumstances where the petitioner was detained without a pre-deprivation bond hearing); *J.U.*, 2025 WL 2772765, at *9–10 (same); *Lopez Benitez*, 795 F. Supp. 3d at 491–496 (same); *Artiga*, 2025 WL 2829434, at *8–9 (same); *Savane*, 801 F. Supp. 3d at 490–95 (same); *Samb*, 2025 WL 2398831, at *3 (same).

67. Under the first *Mathews* factor, the private interest of Mr. Neri Pliego's that is being affected is of fundamental importance: "The interest in being free from physical detention," which is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *see United States v. Salerno*, 481 U.S. 739, 755 (1987) ("In our society liberty is the norm, and detention . . . is the carefully limited exception."); *Zadvydas*, 533 U.S.at 690 (explaining that an individual's interest in being free from detention "lies at the heart of the liberty that [the Due Process] Clause protects").

68. Denying that liberty interest of a noncitizen *requires* an individualized determination as to the noncitizen's risk of flight and danger to the community. *See, e.g.*, *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 795 F. Supp. 3d at 493; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025); *Rosado v. Figueroa*, No. 25-CV-2157, 2025 WL 2337099, at *14 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Pinchi v. Noem*, 792 F. Supp. 3d 1025, 1034–35 (N.D. Cal. 2025).

69. However, in this case, Mr. Neri Pliego "was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness," nor is there any indication "that there was any material change in circumstances that triggered [Mr. Neri Pliego's] sudden arrest and detention" on September 27, 2025. *Hyppolite*, 2025 WL 2829511, at *13. Mr. Neri Pliego has now resided in the United States for almost 30 years, a period that statutorily forecloses detention under Section 1225(b) and guarantees his right to an individualized bond hearing under Section 1226(a). Yet ICE detained him without affording such a hearing, in clear violation of both the INA and due process.

70. Under the second *Mathews* factor, the risk of erroneous deprivation is obvious because Mr. Neri Pliego is illegally subjected to mandatory detention under Section 1225(b)(2). The law requires "an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention [] to prevent an erroneous deprivation of liberty." *Lopez Benitez*, 795 F. Supp. 3d at 495. Furthermore, courts in this jurisdiction have routinely held that 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. *See, e.g.*, *Rodriguez-Acurio v. Almodovar*, No. 25-CV-6065, 2025 WL 3314420, at *30 (E.D.N.Y. Nov. 28, 2025) ("Respondents' detention of [petitioner] with no notice or opportunity to be heard and no showing of changed circumstances violates her due process rights."); *J.U.*, 2025 WL 2772765, at *10 ("Respondent's ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights."); *Hyppolite*, 2025 WL 2829511, at *16 (ordering petitioner's immediate release and that he not be re-detained "without providing him notice and an opportunity to be heard

at a pre-deprivation bond hearing before a neutral decisionmaker, at which the government will bear the burden of showing that his detention is authorized").

71. Mr. Neri Pliego's personal circumstances further demonstrate the "extremely high" risk inherent to an erroneous deprivation here: he has no criminal convictions; he has resided in the United States for almost 30 years; he has a U.S. citizen son and U.S. citizen family members; and he is financially responsible and a caregiver for his son and for other members of his family. *See* Ex. 3, Jomaira Meza Declaration; *Hyppolite*, 2025 WL 2829511, at *14 (finding "extremely high" risk of erroneous deprivation based on similar considerations).

72. As to the third *Mathews* factor, the foregoing considerations heavily outweigh any DHS interest in subjecting Mr. Neri Pliego 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 Section 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 v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025)). These interests are not a concern with regards to Mr. Neri Pliego. He has lived in the United States for almost 30 years and has zero criminal convictions. Additionally, those interests are likewise served by separate mandatory detention procedures applicable to certain categories of noncitizens, such as those who have committed certain crimes. *See* 8 U.S.C. § 1226(c).

73. Thus, the *Mathews* factors therefore establish that Mr. Neri Pliego's detention—without any individualized hearing or procedural safeguards—violates his procedural due process rights under the Fifth Amendment.

ii. Mr. Neri Pliego's detention violates his substantive due process rights

74. In addition to its procedural protections, the Due Process Clause of the Fifth Amendment "includes a substantive component that mandates the application of strict scrutiny

whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 800 F. Supp. 3d at 658 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

75. "[G]overnment detention violates that Clause unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Id.* (citation modified). "This guarantee extends to noncitizens present in the United States." *Hasan*, 800 F. Supp. 3d at 658 (citing *Zadvydas*, 533 U.S. at 693).

76. Respondents have provided no special justification to deny Mr. Neri Pliego his liberty. Nor could they. The arbitrary nature of the deprivation in this case is particularly blatant where ICE presented no argument as to whether Mr. Neri Pliego posed a flight risk or danger to the community.

77. Accordingly, ICE's decision to detain Mr. Neri Pliego—without individualized findings, statutory authority, or any special justification—constitutes arbitrary government action that shocks the conscience and violates the substantive component of the Fifth Amendment's Due Process Clause.

II. Mr. Neri Pliego is Entitled to Immediate Release

78. "The typical remedy for [unlawful executive] detention is, of course, release." *Munaf v. Green*, 553 U.S. 674, 693 (2008).

79. Courts considering the detention of noncitizens under similar circumstances have concluded that "a bond determination by a DHS officer or an immigration judge would not remedy

the core constitutional violation" given that such "detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio*, 2025 WL 3314420, at *31. Accordingly, "'disposing of the matter as law and justice require necessitates [petitioner's] release from detention and relief guarding against her re-detention in violation of this Court's determinations that she is not subject to mandatory detention under Section 1225(b)." *Id.* at *32 (quoting 28 U.S.C. § 2243); *see also O.F.B. v. Maldonado*, No. 25-CV-6336, 2025 WL 3277677, at *8 (E.D.N.Y. Nov. 25, 2025) ("The government's ongoing detention of the petitioner, in the face of this complete failure of process, entitles him to immediate release."); *Ye v. Maldonado*, No. 25-CV-6417, 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025) (same).

80. Mr. Neri Pliego is therefore entitled to immediate release from Respondents' unlawful detention.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

I. Administrative Exhaustion Has Been Satisfied

81. Administrative exhaustion is not a statutory requirement. Rather, courts in this Circuit only "generally" require administrative exhaustion "as a prudential matter" before challenging immigration detention in a federal district court. *Lopez Benitez*, 795 F. Supp. 3d at 496 (excusing administrative exhaustion and granting petition for writ of habeas corpus); *Quintanilla v. Decker*, No. 21-cv-417, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (same); *Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014) ("There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention.").

82. On November 25, 2025, Mr. Neri Pliego moved for a bond hearing, which was then scheduled for December 5, 2025. *See* Ex. 7, Notice of Bond Hearing. At this hearing, the IJ

indicated he had not been able to review the evidence and requested that Mr. Neri Pliego re-file his bond motion. *See* Order of the Immigration Judge (Ouslander, I.J.), dated Dec. 5, 2025, attached hereto as **Exhibit 11**. Mr. Neri Pliego then refiled the bond hearing motion, which was scheduled for December 12, 2025. *See* Notice of Bond Hearing dated December 5, 2025, attached hereto as **Exhibit 12**.

83. At this December 12, 2025 hearing, the IJ denied bond on jurisdictional grounds, citing *Matter of Yajure Hurtado*. *See* Ex. 8, Dec. 12, 2025 Order of the Immigration Judge. The IJ made no further findings. *See id.*

84. On December 19, 2025, Mr. Neri Pliego filed a Motion for Reconsideration in immigration court requesting the court reconsider its denial in light of *Maldonado Bautista III* and reschedule Mr. Neri Pliego for a new bond hearing. *See* Ex. 9, Motion for Reconsideration.

85. On December 23, 2025, the IJ denied Mr. Neri Pliego's Motion for Reconsideration. *See* Ex. 10, Dec. 23, 2025 Order of the Immigration Judge. Despite the final ruling of *Maldonado Bautista*, the IJ found that *Matter of Yajure Hurtado* nonetheless precludes the court from having jurisdiction over Mr. Neri Pliego's custody proceedings. *See id.* Based on the IJ's rulings in Mr. Neri Pliego's hearings and the new EOIR guidance that *Yajure Hurtado* still controls, it is unlikely that any future custody appeal by Mr. Neri Pliego would be successful.

86. Accordingly, Mr. Neri Pliego has exhausted all avenues for administrative remedy and has satisfied the requirement of administrative exhaustion. There is no viable possibility of the agency remedying the past and ongoing violations of Mr. Neri Pliego's rights under the INA and Constitution. ICE and EOIR have made clear their meritless position that *Maldonado Bautista* holds no preclusive effect, and EOIR has denied Mr. Neri Pliego's requests for relief despite his

class membership and entitlement to a bond hearing pursuant to *Maldonado Bautista I* and *II*. Thus, absent this Court's intervention, Mr. Neri Pliego will remain unlawfully detained.

II. To the Extent Administrative Exhaustion Has Not Been Satisfied, It Should Be Excused

87. Even if the Court determines administrative exhaustion has not been satisfied, it should be excused.

88. Courts in this Circuit excuse administrative exhaustion and grant *habeas* petitions for relief from custody when "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003) (citations omitted). A petitioner need not demonstrate all four factors for a court to excuse administrative exhaustion. *Lopez Benitez*, 795 F. Supp. 3d at 496–98 (excusing administrative exhaustion and granting habeas relief where petitioner demonstrated factors (1) and (4)).

89. Courts have excused the exhaustion requirement in cases like Mr. Neri Pliego's where the four prongs of the *Beharry* test are easily satisfied—(1) Mr. Neri Pliego has no genuine opportunity for adequate relief in light of *Yajure Hurtado*; (2) he is already suffering irreparable injury by his unlawful detention; (3) administrative appeal would be futile in light of *Yajure Hurtado*; and (4) Mr. Neri Pliego has raised a substantial constitutional question as to whether his due process rights have been violated. *See, e.g.*, *Artiga*, 2025 WL 2829434, at *3–4; *J.U.*, 2025 WL 2772765, at *3; *Lopez Benitez*, 795 F. Supp. 3d at 497–98; *Alvarez Puga v. Assistant Field Off. Dir.*, No. 25-cv-24535-CIV, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025).

CLAIMS FOR RELIEF

COUNT ONE

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

1. Mr. Neri Pliego realleges and incorporates by reference each and every allegation contained above.

2. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

3. When Mr. Neri Pliego was arrested on September 27, 2025, he was an "alien[] already in the country," and accordingly "may only be subject to detention as a matter of discretion under § 1226(a)." *See J.U.*, 2025 WL 2772765, at *9. Respondents' application of Section 1225(b)(2) to Mr. Neri Pliego unlawfully mandates his continued detention and violates the INA.

COUNT TWO

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT AND *MALDONADO BAUTISTA* (AGAINST KRISTI NOEM, TODD LYONS, AND PAMELA BONDI)

4. Mr. Neri Pliego realleges and incorporates by reference each and every allegation contained above.

5. As a member of the Bond Eligible Class, Mr. Neri Pliego is subject to detention only pursuant to 8 U.S.C. § 1226(a), not 8 U.S.C. § 1225(b)(2).

6. *Maldonado Bautista I* and *II* hold that Respondents violate the INA in applying the mandatory detention statute at Section 1225(b)(2) to Bond Eligible Class members. *Maldonado Bautista III* entered a final judgment to the same effect.

7. Respondents Kristi Noem, Todd Lyons, and Pamela Bondi are parties to *Maldonado Bautista* and bound by the Court's judgments, which have the full "force and effect of a final judgment." 28 U.S.C. § 2201(a).

8. By denying Mr. Neri Pliego a bond hearing under Section 1226(a) and asserting that he is subject to mandatory detention under Section 1225(b)(2), Respondents Kristi Noem, Todd Lyons, and Pamela Bondi violated Mr. Neri Pliego's statutory rights under the INA and the Court's judgment in *Maldonado Bautista*.

COUNT THREE

VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT – 5 U.S.C. § 706(2)

9. Mr. Neri Pliego realleges and incorporates by reference each and every allegation contained above.

10. The Administrative Procedure Act ("APA") provides that "a person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

11. The statute further provides that the reviewing court shall "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1), and "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law" and "contrary to constitutional right, power, privilege, or immunity," *id.* § 706(2)(A)-(B).

12. Respondents' failure to provide Mr. Neri Pliego with a bond hearing reflects an arbitrary and capricious interpretation of 8 U.S.C. § 1226(a) and an unreasoned departure from past precedent. This failure constitutes a final agency action within the meaning of the APA.

13. Respondents' failure to provide Mr. Neri Pliego with a bond hearing is contrary to 8 U.S.C. § 1226(a), and is therefore arbitrary, capricious, and not in accordance with the law.

14. Respondents' failure to provide Mr. Neri Pliego with a bond hearing is a violation of the Due Process Clause and is therefore not in accordance with law and contrary to constitutional right.

15. Mr. Neri Pliego has no other adequate remedy in court to obtain direct review of the agency actions and omissions challenged here to redress Respondents' failure to provide him with the bond procedures required by due process and the INA.

16. Respondents' failure to provide Mr. Neri Pliego with such a bond hearing has caused and continues to cause him substantial and concrete harm.

17. Accordingly, Respondents are in violation of the APA. 5 U.S.C. § 706(1), (2)(A)-(B).

COUNT FOUR

VIOLATION OF PROCEDURAL DUE PROCESS
U.S. Const. amend. V

18. Mr. Neri Pliego realleges and incorporates by reference each and every allegation contained above.

19. 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.

20. 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.

21. Here, the *Mathews* test strongly supports that Respondents' detention of Mr. Neri Pliego violates his procedural due process rights.

COUNT FIVE

VIOLATION OF SUBSTANTIVE DUE PROCESS
U.S. Const. amend. V

22. Mr. Neri Pliego realleges and incorporates by reference each and every allegation contained above.

23. 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.

24. "This guarantee includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 800 F. Supp. 3d at 658 (citing *Reno*, 507 U.S. at 302).

25. Respondents' detention or Mr. Neri Pliego is arbitrary and unjustified, in violation of his substantive due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Mr. Neri Pliego respectfully requests that this Court:

26. Exercise jurisdiction over this matter;

27. Enjoin Respondents from moving Mr. Neri Pliego outside the jurisdiction of this Court and United States pending its adjudication of this petition and full and fair adjudication of his immigration case, including any potential appeal;

28. Release Mr. Neri Pliego from custody of the Respondents pending disposition of this petition.

29. Declare that Mr. Neri Pliego's detention violates the *Maldonado Bautista* Order, the APA, the INA, and the Due Process Clause of the Fifth Amendment;

30. Issue a Writ of Habeas Corpus ordering Mr. Neri Pliego's unconditional release from custody of Respondents, restoring him to the same status of liberty that he enjoyed prior to his arrest, pending the disposition of his removal proceedings, and any potential appeal in those proceedings by Mr. Neri Pliego;

31. Find that Respondents' litigation position is substantially unjustified;

32. Award Mr. Neri Pliego costs and reasonable attorneys' fees; and

33. Order such other relief as this Court may deem just and proper.

Date: February 9, 2026

Respectfully submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

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