UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Daniel PALACIOS

Petitioner,

v.

LaDeon FRANCIS, New York Field Office Director for U.S. Immigration and Customs Enforcement; Heriberto Tellez, Warden of Metropolitan Detention Center (MDC) Brooklyn; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. _____

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

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

PRELIMINARY STATEMENT

1. Petitioner Daniel PALACIOS is in the physical custody of Respondents at the Metropolitan Detention Center, Brooklyn. ("MDC Brooklyn."). Mr. Palacios is married to a U.S. Citizen. He has four U.S. Citizen children ages [redacted] through 18. He has lived in the United States for over 20 years. And, he is the primary breadwinner for his large family–his wife and children depend on him for their annual subsistence.

2. Mr. Palacios is also actively pursuing his immigration case, and has been for years. He currently has an approved I-360 (special immigrant visa), and a pending application for an I-601A (for provisional waiver to remain in the United States while his further immigration applications are processed). He is eligible for cancellation of removal. He is dedicated to his family, and committed to pursuing lawful status in the United States. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have improperly concluded that he is subject to mandatory detention.

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

4. He was detained by Respondents earlier this month, on February 2, 2026. Based on this allegation in Mr. Palacios' removal proceedings, DHS denied him release from immigration custody, consistent with DHS policy, issued on July 8, 2025, instructing all Immigration and Customs Enforcement ("ICE") employees to consider anyone allegedly inadmissible under §

1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A), and therefore ineligible to be released on bond. That new DHS policy was a stark departure from decades of DHS actions releasing individuals who, as alleged against Mr. Palacios, entered the United States without admission or inspection, but are neither a risk of flight nor a danger to the community.

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

6. Mr. Palacios' detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like him who previously entered, and are now residing in the United States. Instead, such individuals are subject to a different statute, 8 U.S.C. § 1226(a), that allows for release on conditional parole or bond, and requires an individualized bail determination upon arrest. That statute expressly applies to people who, like Mr. Palacios, are allegedly inadmissible for having entered the United States without inspection.

7. Mr. Palacios' confinement is unlawful—as confirmed by a cascade of habeas corpus decisions, including within this District, that have rejected Respondents' interpretation of § 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release. Mr. Palacios also asks this Court to enjoin his transfer outside this District. *See Local 1814, Intern.*

Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc., 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 2:25-cv-1963 (MEF) (D.N.J.) Mar. 19, 2025), ECF No. 81 (enjoining transfer and removal of an immigration *habeas* petitioner under the All Writs Act). Alternatively, Mr. Palacios respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his immediate release.

PARTIES

8. Petitioner Daniel Palacios is a resident of Westbury, NY who has lived in the U.S. continuously since 2005, when he entered without inspection. ICE arrested him on or about February 2, 2026. Mr. Palacios is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

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

10. Respondent HERIBERTO TELLEZ is named in his official capacity as the Warden of the Metropolitan Detention Center ("MDC") Brooklyn

11. 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 DOJ.

12. 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.

13. 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

14. 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).

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

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

EXHAUSTION

17. Mr. Palacios is not required to exhaust administrative remedies because doing so would be futile.

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

19. 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).

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

21. On September 5, 2025, the Board decided *Matter of Yajure Hurtado*, a precedential decision finding that all noncitizens who, like Mr. Palacios, 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). Thus, the BIA will be bound to find that Mr. Palacios is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release. This is true although the overwhelming majority of Article III district courts in the country that have heard a challenge to this reading of the statute has unequivocally rejected Respondents' argument.

FACTUAL BACKGROUND: MR. PALACIOS HAS LIVED IN NEW YORK FOR MORE THAN TWO DECADES; HE IS A VALUE MEMBER OF HIS FAMILY AND COMMUNITY

22. Mr. Palacios has resided in the United States since 2005 and lives in Westbury, New York. He works in construction and landscaping. Although Mr. Pacaios' wife works as a clerk typist [redacted] he is the primary breadwinner for their family of six.

23. Mr. Palacios' wife, Glenys, is a U.S. Citizen wife. Together they have four children ages [redacted] all of whom are U.S. citizens. Because his work in construction and gardening is largely seasonal, during the present winter months, he is the primary caretaker for his young children. Mr. Palacios brings his children to school, and picks them up. He prepares their meals, and is their mainstay. His children know they can rely on their father, and they do daily.

24. Mr. Palacios and his wife are extremely close. Throughout their marriage she has suffered from bouts of [redacted] illness, and has consistently relied on Mr. Palacios for emotional support, and stability. Their family cannot function without him.

25. Mr. Palacios is also closely connected to the community in which he has lived for two decades. He attends St. Brigid's Catholic Church in Westbury, New York and is a beloved member of the congregation. He and his wife volunteer with several local organizations—the Westbury High School Parent Teachers Association [redacted] the Westbury Hispanics United Association, the Long Island Immigrants Justice Alliance, and the Long Island Latino Association.

26. On February 2, 2026, Mr. Palacios was abruptly arrested by Respondents. Three years ago, Mr. Palacios was sentenced to three years' Probation for a conviction (his first) for Driving While Intoxicated, pursuant to NY VTL §1192.2. He has no other criminal history. Mr. Palacios had completed his probationary period without incident, and was attending his final routine meeting with his probation officer earlier this month when several ICE agents arrested him without warning. The ICE agents told him his arrest was because he "had no papers"—an objective misrepresentation of his current immigration status. He has been detained for more than ten days, and is presently in custody at the Metropolitan Detention Center in Brooklyn, New York.

27. DHS placed Petitioner in removal proceedings pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, inter alia, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

28. As a result of his marriage, petitioner has an approved I-130 special immigrant visa, and a pending I-601A, an application seeking a waiver for the unlawful presence he has accrued since entering in 2005. He is eligible for cancellation of removal, and is receiving support from lawyers at Central American Legal Assistance (CALA) to prepare his cancellation of removal case.

29. Mr. Palacios is neither a flight risk nor a danger to the community. Respondents have never alleged otherwise.

30. Nonetheless, pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider his bond request.

31. As a result, Mr. Palacios remains in detention. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his wife and four children, who need him home for financial, logistical, and emotional support. There is no reason in fact or law why Mr. Palacios, and his U.S. citizen wife and four children should suffer this gratuitous separation.

LEGAL BACKGROUND

A. Immigration Detention Legal Framework

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

33. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. See 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, see 8 C.F.R. §§ 1003.19(a), 1236.1(d),

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

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

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

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

37. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole." 8 U.S.C. § 1226(a)(2)(A)–(B).20.

38. Under the § 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-cv-5937,2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may move for a bond redetermination hearing before the immigration judge. See 8 C.F.R. §1003.19.

39. In contrast with § 1226, which applies to "certain [noncitizens] already in the country," *Jennings*, 583 U.S. at 289 (emphasis added), § 1225(b) governs detention of noncitizens

seeking entry into the United States (i.e., "applicants for admission"). In other words, § 1225(b) mandates detention for those noncitizens not already present in the United States, and subject to that statute; that limited subset of immigrants are not eligible to be considered for release.

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

41. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a)--and not § 1225(b)(2)--and could thus seek bond through immigration proceedings. *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 287-89.

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

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

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

44. Since Respondents adopted their new policy, almost every district court–and every judge in this district–that has confronted this issue "has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez*, 2025 WL 2782499, at *1 (collecting 22 recent cases finding against the government's interpretation);[2] *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to

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[2] *See, e.g., Lopez Benitez v. Francis*, 25-cv-5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz*, 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-cv-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-cv-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, 25-cv-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 25-cv-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-cv--11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-cv-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. 25-cv-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. 25-cv-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-cv-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-cv-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogllo Chafla v. Scott*, 2:25-cv-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-cv-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25- CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same).

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

46. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled

(formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

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

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

[3] Few courts have endorsed Respondents' wholesale reinterpretation of the immigration statutes. Those that have are extreme outliers and stand in stark contrast to the hundreds of other judges throughout the country who have ruled to the contrary. So too, the Fifth Circuit's decision in *Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *1 (5th Cir. Feb. 6, 2026), is at odds with the demonstrable history and longstanding interpretation of the immigration detention statutes. While the Fifth Circuit referred to the immigrant petitioners' statutory interpretation under §§ 1225 and 1226 (analogous to the arguments here) as "novel," it simultaneously recognized that very interpretation had been uniformly accepted by immigration counts,

49. Mr. Palacios was arrested after more than 20 years of continuous presence in the United States, not while "seeking admission." Further, his pending asylum application is not legally considered a process of "seeking admission." *See Lopez Benitez v. Francis*, No. 25-cv- -5937 (DEH), 2025 WL 2371588, at *6 n.7 (S.D.N.Y. Aug. 13, 2025); *Garcia-Mendez v. Lynch*, 788 F.3d. 1058 (9th Cir. 2015).

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

B. Noncitizens Possess Procedural Due Process Rights

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

52. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*,

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petitioners, and the U.S. government for decades. *Id.* at *1; *compare id.* at *3 ("From 1997 to 2025, successive presidential administrations and many immigration judges treated unadmitted aliens as being subject to § 1226(a) rather than § 1225(b)(2)"). Indeed, the dissent in *Buenrostro-Mendez* best explains the logical, historical, and interpretive fallacies dooming the Fifth Circuit panel majority's statutory interpretation: "The Congress that passed [the statutes at issue] would be surprised to learn it had also required the detention without bond of two million people. ***For almost thirty years there was no sign anyone thought it had done so, and nothing in the congressional record or the history of the statute's enforcement suggests that it did.***" *Buenrostro-Mendez*, No. 25-20496, 2026 WL 323330, at *10 (5th Cir. Feb. 6, 2026) (Douglas, J., dissenting) (emphasis added).

No. 25-cv-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

53. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, No. 25-cv-493, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

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

C. Mr. Palacios' Constitutional Due Process and Statutory Rights Require an Individualized Determination Prior to Detention

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

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

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

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

59. Recent decisions by federal courts throughout the country confirm that due process requires the government to make individualized determinations to detain noncitizens, and give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—*i.e.*, Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

60. As a result, courts throughout the country, and in this district, have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g., Contreras Maldonado*, 2025 WL 2985256, at *7; *Rivera Zumba*, 2025 WL 2753496, at *11; *Lopez Benitez*, 2025 WL 2371588, at *15; *Lomeu*, 2025 WL 2981296, at *9; *Soto*, 2025 WL 2976572, at *9; *see also Maklad v. Murray*, No. 1:25-CV-946, 2025 WL 2299376, at *10 (E.D. Cal. Aug 8, 2025); *Pinchi*, 2025 WL 2084921, at *7; *Velasquez*, 2025 WL 1953796, at *18; *Singh v. Andrews*, No. 1:25-CV-00801, 2025 WL 1918679, at *10 (E.D. Cal. July 11, 2025); *Kelly*, 2025 WL 2381591, at *8; *Rosado*, 2025 WL 2337099, at *19; Valdez, 2025 WL 1707737, at *5.

61. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Mr. Palacios before

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

62. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision only clarifies that they neither did, nor intend to evaluate whether Mr. Palacios' personal circumstances would otherwise warrant detention under Section 1226–the sole lawful authority for detaining individuals residing in the U.S. Indeed, in what is becoming their routine litigation strategy, Respondents will likely advance a two-part argument to perpetuate their unlawful detention scheme: first, they will claim Petitioner's detention is lawful under Section 1225(b)(2), and then, as a fallback, acknowledge that Section 1226 applies but that Petitioner should seek an administrative bond hearing. All the while, Petitioner will likely remain in detention awaiting such a hearing and for any administrative appellate process to run its course. Immediate release is the only remedy that would end this game of bait-and-switch.

D. Mr. Palacios Is Entitled to Release: He is Neither a Flight Risk nor a Danger to the Community

63. Here, immediate release is warranted for Mr. Palacios because Respondents have not—and cannot—show that they conducted an individualized determination of his risk of flight or dangerousness before his summary detention on February 2, 2026. Administrative convenience, resource allocation, or detention capacity are not legitimate bases for civil detention under the Fifth Amendment; they do not constitute an individualized determination as to Mr. Palacios' entitlement to release. *See Velasco Lopez*, 978 F.3d at 852 (government bears the burden of justifying detention with evidence related to flight risk or danger); *Sajous v. Decker*, No. 18-cv-2447, 2018 WL

2357266, at *10 (S.D.N.Y. May 23, 2018) (detention must be justified by individualized findings, not generalized or administrative concerns).

64. Mr. Palacios has lived in the United States for over twenty years. Nothing in his conduct or profile had changed to precipitate his detention last month. There is simply no individualized justification available for his remaining in custody now. His release is thus required under both the governing statute, and the U.S. Constitution. *See Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

65. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes their decision to forgo any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the United States. Mr. Palacios' detention is thus *ultra vires*, requiring his immediate release.

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

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

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

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

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

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

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

SECOND CAUSE OF ACTION:

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

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

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

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

THIRD CAUSE OF ACTION:

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

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

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

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

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

FOURTH CAUSE OF ACTION:

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

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

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

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

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

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

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;

2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[4]

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

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

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

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

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

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

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.

Respectfully Submitted,

Dated: February 13, 2026
New York, NY

/s/ IH
Ilana Haramati
MEISTER SEELIG & FEIN PLLC

Pro Bono Counsel for Petitioner Daniel Palacios