UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Julio Gonzalez Guardado,

Petitioner,

v.

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

Respondents.

Civil Action No.

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

INTRODUCTION

1. Petitioner Julio Gonzalez Guardado ("Mr. Gonzalez Guardado"), a 65-year-old, twenty-year New York resident, seeks immediate release from Respondents' unlawful detention arising out of a violent, warrantless arrest by armed immigration officers.

2. On January 8, 2026, Mr. Gonzalez Guardado was standing alone, drinking his morning coffee near a Long Island Home Depot while waiting to meet his employer. Suddenly, several unmarked, black vehicles suddenly pulled into the parking lot and surrounded him on all sides. Without saying a word about who they were or why they were there, multiple armed men with bullet proof vests jumped out of the cars and began approaching Mr. Gonzalez Guardado. Mr. Gonzalez Guardado initially thought he was being kidnapped and tried walking away, but he

was blocked and had nowhere to go. One of the vehicles drove towards him while agents pushed him from the back, causing the moving vehicle to strike him on the left side of his chest. Once up close, Mr. Gonzalez Guardado realized two of the officers were wearing uniforms with U.S. Immigration and Customs Enforcement ("ICE") decals. The ICE officers did not ask Mr. Gonzalez Guardado any questions nor did they tell him why they were arresting him. Despite the fact that he was in no way resisting the arrest, one of the two officers held him by the neck against one of the vehicles while the other held a gun to his head and yelled at him not to move. The officers searched Mr. Gonzalez Guardado and took his belongings, including his phone and wallet. With a gun still to his head, the officers handcuffed him. The officers then threw Mr. Gonzalez Guardado into one of the vehicles "like an animal" without any explanation. Gonzalez Guardado Decl., Ex. 1, ¶¶ 13–17.

3. Mr. Gonzalez Guardado's forcible seizure is not an isolated incident. It is part of a pattern of indiscriminate immigration enforcement operations on Long Island involving the targeting and racial profiling of Latinos and individuals with brown skin perceived to be Latino, as they go about their daily lives.[1] As in Mr. Gonzalez Guardado's case, ICE arrests individuals without a warrant, probable cause, or an individualized custody review, in violation of the Immigration and Nationality Act ("INA") and the Fourth and Fifth Amendments of the United States Constitution.

[1] *See* Collection of Articles Ex. 2, Dean Moses, *3 of Every 4 New Yorkers Arrested by ICE Agents Are Latino: Immigration Coalition Report*, AMNY (Dec. 10, 2025) ("ICE is disproportionately targeting Latinos for arrest, both nationally and in New York State."), https://www.amny.com/immigration/ice-agents-arrested-latino-new-yorkers-report/; Bahar Ostadan, *'It's Pure Racism': Suffolk Community Reels Over Recent ICE Arrest of 3 Men*, Newsday (Feb. 8, 2026), https://www.newsday.com/long-island/greenport-ice-arrests-protest-r0t95b0u; David Olson, *Long Island's Latino Delis Struggle Amid ICE Arrests, Reflecting Immigrant Fears*, Newsday (Oct. 6, 2025), https://www.newsday.com/long-island/delis-fear-ice-u87hbe9s (discussing uptick in ICE arrests in Nassau County and describing the fear pervading Latino communities due to the targeting of Latinos of all immigration backgrounds); Bahar Ostadan, *Marchers in Hempstead Demand End to ICE Immigration Raids*, Newsday (June 29, 2025), https://www.newsday.com/long-island/nassau/hempstead-ice-march-protest-cei3uqxy (discussing sweeping arrests of day laborers in Hempstead, the large majority of whom are Latino).

4. Mr. Gonzalez Guardado has been detained by the Respondents without a bond hearing since January 8, 2026. ICE has not provided Mr. Gonzalez Guardado a basis for his arrest. Upon information and belief, despite the fact that he has lived continuously in the United States since approximately 2006 and was arrested by ICE in the interior of the country, Respondents are detaining Mr. Gonzalez Guardado under 8 U.S.C. § 1225(b)(2), a mandatory detention scheme that "applies primarily to [noncitizens] seeking entry into the United States." *Jennings v. Rodriguez*, 583 U.S. 281, 297 (2018) (alteration added).

5. However, as the overwhelming majority of district courts in the Second Circuit have held, individuals in Mr. Gonzalez Guardado's circumstances are subject to detention under 8 U.S.C. § 1226(a). *See, e.g.*, *Flores-Linares v. Bondi*, No. 26-CV-00298-SJB, 2026 WL 179208, at *5 (E.D.N.Y. Jan. 22, 2026) ("Court after court, judge after judge, in district after district has rejected [the government's] argument." (alteration added)); *Crespo Tacuri v. Genalo*, No. 25 Civ. 6896 (NCM), 2026 WL 35569, at *3 (E.D.N.Y. Jan. 6, 2026) (noting that as of the date of the decision, "[t]he judges that have considered this issue within the Eastern District of New York in the last four months have unanimously rejected the government's interpretation."); *Padilla Molina v. Deleon*, No. 25 Civ. 6526 (JMA), 2025 WL 3718728, at *3 (E.D.N.Y. Dec. 23, 2025) ("[T]he Court joins the hundreds of district court decisions that have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA." (citations omitted)).[2] This overwhelming consensus reflects the depth of Respondents' misreading

[2] *See also e.g.*, *Singh v. Maldonado*, No. 26 Civ. 119 (OEM), 2026 WL 233216, at *8, *10 (E.D.N.Y. Jan. 29, 2026); *Minarcaja Concha v. Lyons*, No. 2:25 Civ. 6695 (NJC), 2026 WL 215417, at *13, *19 (E.D.N.Y. Jan. 28, 2026); *Covelli-Chaparro v. Bondi*, No. 2:26 Civ. 118 (NJC), 2026 WL 118842, at *6-7 (E.D.N.Y. Jan. 15, 2026); *Iza by Iza v. Larocco*, No. 2:25 Civ. 6915 (NJC), 2026 WL 31378, at *13, *16 (E.D.N.Y. Jan. 5, 2026); *Galeas Miranda v. Maldonado*, No. 25 Civ. 6882 (PKC), 2026 WL 25405, at *2, *2 n.1 (E.D.N.Y. Jan. 5, 2026); *Arizmendi v. Noem*, No. 25 Civ. 7056 (NRM), 2025 WL 3723960, at *1–2 (E.D.N.Y. Dec. 24, 2025); *Padilla Molina v. DeLeon*, No. 25 Civ. 06526 (JMA), 2025 WL 3718728, at *2– 5 (E.D.N.Y. Dec. 23, 2025); *Ulloa Montoya v. Bondi*, No. 25 Civ. 06363, 2025 WL 3718694, at *3–6 (E.D.N.Y. Dec. 23, 2025) (JMA); *Pesantez Castro v. Maldonado*, No. 25 Civ. 06844, 2025 WL 3723966, at *1–2 (E.D.N.Y. Dec. 23, 2025) (JMA); *Y- C- v. Genalo*, No. 25 Civ. 06558 (NCM), 2025 WL 3653496, at *3–5, *8 (E.D.N.Y. Dec. 17,

of the INA and of their disregard for the constitutional and statutory rights of noncitizens in the United States.

6. Under 8 U.S.C. § 1226(a), the Due Process Clause of the Fifth Amendment requires ICE to first conduct an individualized assessment of the individual's flight risk and danger to the community. This process was not afforded to Mr. Gonzalez Guardado and his continued detention is thus in violation of the law. In light of the severe violations of his statutory and constitutional rights, Mr. Gonzalez Guardado brings this petition pursuant to the INA, 8 U.S.C. §§ 1225(b)(2)(A), 1226(a), and 1357(a)(2); the Due Process Clause, U.S. Const. am. V; the Fourth Amendment, U.S. Const. am. IV; and the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2), seeking his immediate release and asking this Court to enjoin his transfer outside this district. *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *see also Perez y Perez v. Noem*, No. 25-CV-4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

PARTIES

7. Mr. Gonzalez Guardado is a long-time resident of Queens, New York who has

2025); *Ye v. Maldonado*, No. 25 Civ. 06417 (AMD), 2025 WL 3521298, at *3–6, *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25 Civ. 6065 (NJC), 2025 WL 3314420, at *21, *33 (E.D.N.Y. Nov. 28, 2025); *O.F.B. v. Maldonado*, No. 25 Civ. 6336, 2025 WL 3277677 (HG), at *3–5, *8 (E.D.N.Y. Nov. 25, 2025); *Sarmiento Guerrero v. Noem*, No. 25 Civ. 05881 (EK), 2025 WL 3214787, at *3–7 (E.D.N.Y. Nov. 18, 2025); *Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *7–12, *16 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4–9 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025); *see also, e.g., Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–91, 499 (S.D.N.Y. 2025); *Yao v. Almodovar*, No. 25 Civ. 9982 (PAE), 2025 WL 3653433, at *4–10, *12 (S.D.N.Y. Dec. 17, 2025); *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), 2025 WL 3295903, at *4, *13 (S.D.N.Y. Nov. 26, 2025) (noting that the issue of whether all noncitizens who entered the United States without authorization "*must be detained* until their removal proceedings are completed [] has been challenged in at least 362 cases in federal district courts," and "[t]he challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States").

resided continuously in the United States since approximately 2006. According to U.S. Department of Homeland ("DHS") Security Records, Mr. Gonzalez Guardado entered the United States without inspection and was not then admitted or paroled. Notice to Appear, Ex. 3. He was arrested and detained by ICE on January 8, 2026 while waiting for his employer near a Long Island Home Depot parking lot. Mr. Gonzalez Guardado is currently under the custody of the Respondents at the Metropolitan Detention Center in Brooklyn ("MDC"), 80 29th Street, Brooklyn, NY 11232 and has been detained there since late January 2026.

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

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

10. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the Department of Justice, including the Board of Immigration Appeals ("BIA") and the Executive Office for Immigration Review ("EOIR").

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

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

JURISDICTION AND VENUE

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

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

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

EXHAUSTION

16. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025) (citing *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021)). 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).

17. Petitioner's case meets every requirement. Administrative appeal is manifestly futile and unable to provide a genuine opportunity for adequate relief, his petition raises substantial constitutional questions, and he faces irreparable injury if his detention continues.

18. First, an administrative appeal will not provide a genuine opportunity for adequate relief and would be futile given the agencies' interpretation of the INA. On September 5, 2025, the BIA decided *Matter of Yajure Hurtado*, a precedential decision finding that all noncitizens who, like Petitioner, have not been admitted to the United States are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). Moreover, on January 13, 2026, Chief Immigration Judge Teresa L. Riley issued nationwide guidance instructing immigration judges to continue to follow *Yajure Hurtado*. *See* Practice Alert, Ex. 4, *Practice Alert: EOIR Issues Nationwide Guidance on* Maldonado Bautista, Am. Immigr. Laws. Ass'n (Jan. 16, 2026), https://www.aila.org/library/practice-alert-eoir-issues-nationwide-guidance-on-maldonado-bautista.

19. Some Immigration Judges have continued to follow EOIR policy and *Yajure Hurtado*'s interpretation despite the overwhelming majority of district courts in the country that have rejected this reading of the statute out of hand and a nationwide class action in which declaratory relief has been granted finding unlawful DHS's policy of detaining pursuant to Section 1225(b)(2) noncitizens already present in the United States who entered without inspection. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *11 (C.D. Cal. Feb. 18, 2026) ("Respondents choose to disregard this Court's declaration of law and vacatur of unlawful agency action. They instead insist that agency regulations dictating the EOIR's structure require IJs to follow *Yajure Hurtado*.").

20. Numerous courts have found that exhaustion is excused in immigration habeas petitions in analogous postures to Mr. Gonzalez Guardado's, either due to *Yajure Hurtado* or because seeking bond would be otherwise futile. *Tumba v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014, at *8 (S.D.N.Y. Nov. 4, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 497; *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *3–4 (E.D.N.Y. Oct. 5, 2025); *J.U.*, 805 F. Supp. 3d at 490; *Alvarez Puga v. Ass't Field Off. Dir.*, No. 25 Civ. 24535, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025); *see also Ipina Hernandez v. Genalo*, No. 26-CV-137 (VSB), 2026 WL 507739, at *6 (S.D.N.Y. Feb. 22, 2026) ("I excuse Petitioner's failure to administratively exhaust his remedy before challenging his detention because 'a bond hearing [cannot] retrospectively cure the due process violation, which derived from [Petitioner's] unlawful arrest and detention without the statutorily required exercise of discretion'" (citation omitted)).

21. Second, Mr. Gonzalez Guardado asserts (and will establish) that his continued detention violates his rights under the Due Process Clause. *See, e.g.*, *J.U.*, 805 F. Supp. 3d at 489–90 (E.D.N.Y. 2025) (finding that noncitizen detainee was not required to exhaust administrative remedies because he "raises a substantial constitutional question[,] . . . a violation of his due process rights[,] . . . [that] neither an immigration judge nor the BIA is properly positioned to adjudicate" (alterations added)); *Artiga*, 2025 WL 2829434, at *4 (finding exhaustion not required because "Petitioner's allegations of his detention by ICE raise a substantial constitutional question that cannot be properly adjudicated administratively" and, because ICE had not previously made an individualized custody determination, "there are no administrative remedies available that could provide Petitioner with the relief he seeks"); *Arango v. Genalo*, 2025 WL 3637500, at *3 (E.D.N.Y. Dec. 16, 2025) (finding that, in light of respondents' failure to conduct individualized custody determination before detention, "any post-deprivation review by an immigration judge

would be inadequate" (quoting *Lopez Benitez*, 795 F. Supp. 3d at 496) (internal quotation marks omitted)).

22. Finally, requiring Mr. Gonzalez Guardado to exhaust administrative remedies before seeking relief would only increase the time he spends in detention in violation of his constitutional rights and will exacerbate this irreparable harm. *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992) (holding that exhaustion is not appropriate where petitioner "may suffer irreparable harm if unable to secure immediate judicial consideration of [her] claim" (alteration added)); *J.U.*, 805 F. Supp. 3d at 490 (same). Here, Mr. Gonzalez Guardado's arrest and detention, which continue to impact his mental and physical wellbeing each passing day, constitute irreparable injury.

STATEMENT OF FACTS

A. Mr. Gonzalez Guardado fled to the United States after being brutally beaten and threatened with death.

23. Mr. Gonzalez Guardado was born on October 30, 1965. He is 65 years old, and entered the United States without being admitted or paroled in or around 2006. Gonzalez Guardado Decl. Ex. 1, ¶ 3; Notice to Appear Ex. 3. Mr. Gonzalez Guardado came to the United States seeking safety after enduring a brutal attack [redacted] in El Salvador. Gonzalez Guardado Decl. Ex. 1 ¶ 4. The gang members attacked Mr. Gonzalez Guardado while he was out shopping with his partner's [redacted] grandson, who he sees as his own grandson. *Id.* at ¶ 4. The [redacted] *Id.* at ¶ 4. As a result, [redacted] beat Mr. Gonzalez Guardado, kicking him and hitting him with whatever was around. *Id.* at ¶¶ 4–5. Mr. Gonzalez Guardado was hit on the head with a wooden object and lost consciousness. *Id.* at ¶ 5. The gang kidnapped his grandson during the attack. *Id.* He has been missing ever since. *Id.* The gang members threatened that they would kill Mr.

Gonzalez Guardado the next time they saw him. *Id.* at ¶ 7. Mr. Gonzalez Guardado went home and prepared to flee. He left several days later to find safety in the United States. *Id.* Since that day, Mr. Gonzalez Guardado has suffered from regular headaches and memory loss. There is still a scar on his head from the day of the attack. *Id.* at ¶ 5.

24. Mr. Gonzalez Guardado settled in Queens, New York and began working in construction. *Id.* at ¶ 8. Since coming to the United States in 2006, Mr. Gonzalez Guardado has continuously resided in Queens, New York. *Id.* at ¶ 3. Prior to the January 8, 2026 arrest underlying this petition, he had never been arrested nor does he have any convictions, in the United States or any other country or jurisdiction. *Id.* at ¶ 10.

B. Mr. Gonzalez Guardado's violent arrest near a Long Island Home Depot parking lot.

25. On January 8, 2026, Mr. Gonzalez Guardado took a public bus to a Home Depot in Nassau County, New York, to meet an employer who had contracted him for construction work on a home. *Id.* at ¶ 11. They had agreed to meet at 8:00am. *Id.* Mr. Gonzalez Guardado arrived at the parking lot by the Home Depot at approximately 7:00am and had his coffee while waiting for his employer. *Id.* While there, a security officer working for Home Depot yelled at him to leave. *Id.* at ¶ 12. Mr. Gonzalez Guardado told him, with his limited English, that he was waiting for his boss to purchase things at Home Depot. *Id.* The security guard accused Mr. Gonzalez Guardado of soliciting work, so Mr. Gonzalez Guardado moved to another area of the parking lot, closer to a Taco Bell, to avoid trouble. *Id.*

26. About 30 minutes after he arrived at Home Depot, five unmarked, black vehicles suddenly pulled into the parking lot and surrounded Mr. Gonzalez Guardado on all sides. *Id.* at ¶ 13. Multiple armed men jumped out of the cars and started heading towards him. *Id.* Some were wearing beige uniforms and others were plain clothed, but they all wore what appeared to be

bulletproof vests and carried weapons of various sizes. *Id.* A few had their faces and heads covered with ski masks. *Id.* At first, Mr. Gonzalez Guardado did not understand who they were, as none of them identified themselves. *Id.* at ¶ 14. He thought that he was being kidnapped and tried to walk away but had nowhere to go as he had been blocked on all sides. *Id.* at ¶ 14.

27. Without asking him anything or explaining who they were, he was pushed from behind as one of the cars was moving towards him, causing the car to hit the left side of Mr. Gonzalez Guardado's chest. *Id.* Two of the officers then approached him to restrain him. *Id.* At this point, Mr. Gonzalez Guardado realized they were ICE officers, as the two officers had "ICE" written on their uniforms. *Id.* Even though he was not resisting arrest, one of the officers held him down by his neck, against one of the vehicles, as the other pointed a gun to his head and told him not to move. *Id.* at ¶ 15. The officers searched him and took his phone and wallet from his person. *Id.* His wallet had his NYC ID, *id.*, which identifies him by name, date of birth, and address, but does not indicate his immigration status or nationality.

28. While the ICE officer held a gun to his head, Mr. Gonzalez Guardado feared for his life. *Id.* at ¶ 16. He thought about the woman in Minnesota who had been killed by ICE in her car just the day before.[3] Gonzalez Guardado Decl. Ex. 1, ¶ 16. When the officer put the gun down, Mr. Gonzalez Guardado considered himself lucky to be alive. *Id.* at ¶ 16.

29. The officers then handcuffed him and threw him into one of the vehicles, "like an animal." *Id.* at ¶ 17.

30. In the vehicle, Mr. Gonzalez Guardado asked an officer who spoke Spanish why he was being arrested, but the officer didn't answer his question. *Id.* at ¶ 18. He pleaded with the officer telling him that his mother and partner needed him, and that he needed to work. *Id.* The

[3] Christina Morales, *Victim in ICE Shooting Is Remembered for Her Kindness*, N.Y. Times (Jan. 7, 2026), https://www.nytimes.com/2026/01/07/us/renee-nicole-good-minneapolis-ice.html.

officer just said "I don't know." *Id.* No one told Mr. Gonzalez Guardado why he was being arrested, showed him any warrant for his arrest, nor say that they supposedly had a warrant. *Id.* at ¶ 17.

31. Shortly after, officers put another Latino man into the same car. *Id.* at ¶ 19. The officers took both men to a different parking lot, filled with what looked like ICE vehicles, where Mr. Gonzalez Guardado saw other arrestees, many of whom were Latino. *Id.* The officers still failed to tell Mr. Gonzalez Guardado why they arrested him. *Id.*

32. The officers never asked for Mr. Gonzalez Guardado's immigration status. *Id.* at ¶ 20. They never asked him whether he had a fear of returning to his country of origin. *Id.*

33. After signing several documents, Mr. Gonzalez Guardado was moved to a detention facility further out on Long Island. *Id.* at ¶ 20–21. On information and belief, at some point after his arrest, ICE issued Form I-200, Warrant for Arrest of Alien for Mr. Gonzalez Guardado, which according to ICE's own records, was served on Mr. Gonzalez Guardado when he was already at the East Meadow Jail. The next morning, officers drove him back to the office where he had signed several papers the day before. *Id.* at ¶ 22. They then drove him to another detention facility, where he waited in a vehicle outside the facility for several hours before they drove him to Orange County Jail. *Id.* They detained him at Orange County Jail for several days before they transferred him to MDC in Brooklyn in late January 2026, where he remains today. *Id.*

C. ICE's larger pattern of racially profiling Latino individuals and detaining them in inhumane jail-like conditions.

34. Mr. Gonzalez Guardado's case is part of a larger pattern of ICE agents racially profiling and targeting perceived Latino immigrants. [4] In New York State, ICE is disproportionately targeting Latinos for arrest.[5] ICE arrests on Long Island, and among Latino day

[4] *See* Collection of Articles Ex. 2.
[5] *See* Collection of Articles Ex. 2, Moses.

laborers in particular, have greatly increased in the past year, causing widespread fear amongst Latino communities in the area.[6] Upon information and belief, ICE agents rounded up Mr. Gonzalez Guardado alongside other mostly Latino immigrants as part of their discriminatory enforcement campaign against Latino immigrants.

35. Mr. Gonzalez Guardado has also become ensnared in Respondents' ever-broader and more indiscriminate campaign to criminalize noncitizens and subject them to mandatory detention in jail-like conditions and deprive them of due process. *See, e.g.*, *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *2 (C.D. Cal. Feb. 18, 2026) ("'Worst of the worst' is an inaccurate description of most of those affected by DHS and ICE's operations. Perhaps . . . DHS seeks to justify the magnitude and scope of its operations against non-criminal noncitizens. Maybe that phrase merely mirrors the severity and ill-natured conduct by the Government.") (calling immigration enforcement actions by the government "reckless violations of the law").

36. Although Mr. Gonzalez Guardado is subject to non-punitive civil detention, the government is detaining him at MDC, a jail that is well-known for its record of inhumane conditions. *See, e.g.*, *United States v. Colucci*, 743 F. Supp. 3d 452, 455 (E.D.N.Y. 2024) ("Allegations of inhumane treatment at MDC continue . . . and judges in this district are subject to a steady drumfire of such charges, often uncontested by prosecutors. And these issues continue to affect judicial determinations." (citations omitted)).[7]

[6] *See* Collection of Articles Ex. 2, Olson, *see also id.*, Ostadan.

[7] *See also* Katie Rose Quandt & Maeve Brennan, *Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for Its Famous Detainees*, Solitary Watch (June 30, 2025) (describing conditions at MDC, including but not limited to brown running water, lack of hot water, maggots and cockroaches on detainees' food, showers and lights in disrepair; and withholding of medication); Victoria Bekiempis, *'Dirty' and 'Infested with Drugs': The New York Jail Holding Maduro and Mangione*, Guardian (Jan. 7, 2026) (describing MDC conditions including food contamination, generally poor sanitation, and near-constant, unjustified lockdowns, noting that "[f]ederal judges have even refused to send defendants there who they determine don't pose a danger to others"); Rachel Treisman, *The NYC Jail Holding Maduro Has a History of Big Names and Dangerous Conditions*, NPR (Jan. 5, 2026) (quoting a New York state senator's comment that people detained at MDC experience "constant lockdowns, medical mistreatment, and botched cancer diagnoses, and complaints of maggot-infested food," as well as "abuse, severe understaffing, and extreme temperatures," and citing to "[a] 2016 report from the National Association of Women Judges [that] called [MDC's]

37. For about 15 days following the arrest, Mr. Gonzalez Guardado had a bruise on the left side of his chest from where the officers' car hit him during the arrest. Gonzalez Guardado Decl. Ex. 1, ¶ 23. He experienced pain and struggled to lift his left arm. *Id.* He never received medical attention for the injury. *Id.*

38. When he was detained at Orange County Jail, Mr. Gonzalez Guardado also developed an ear infection that has caused him an earache and headaches. *Id.* at ¶ 24. Despite requesting medication at Orange County Jail, Mr. Gonzalez Guardado only saw a doctor after being transferred to MDC and obtaining legal counsel. *Id.* After weeks of enduring pain and discomfort in his ear, he finally received treatment for it though he cannot hear well with the affected ear. *Id.*

39. The day-to-day conditions at MDC have also been challenging for Mr. Gonzalez Guardado. Mr. Gonzalez Guardado cannot sleep well. *Id.* at ¶ 25. He suffers from nightmares about having a cold gun pressed to his head. *Id.* He wakes up agitated and with his heart beating fast. *Id.* He suspects his lack of sleep is causing him blurry vision. *Id.*

40. While detained, Mr. Gonzalez Guardado has also been eating poorly, and MDC does not permit him to keep fruit in case he wants to snack after meals. *Id.* Sometimes, the facility does not let him go outside and locks him in his cell for up to about two days. *Id.* Mr. Gonzalez Guardado has described the horrible feeling of having to use the bathroom with no privacy in front of cellmates. *Id.*

41. Mr. Gonzalez Guardado has had to endure these degrading conditions for nearly two months. *Id.* at ¶¶ 10–21 (explaining he was arrested on January 8, 2026 and describing his immediately subsequent detention).

conditions 'unconscionable,' saying they violated both the American Bar Association's standards and the United Nations Standard Minimum Rules for Treatment of Prisoners").

D. Mr. Gonzalez Guardado has dedicated his life in the United States to work to support his family and those in need.

42. Before being detained, Mr. Gonzalez Guardado had been living in New York City, working in construction, going to church and seeing friends when his work schedule permitted, and using most of his salary to send money to support his family and their neighbors back in El Salvador. *Id.* at ¶ 26.

43. His mother is unable to walk or speak after a stroke. *Id.* at ¶ 27. She relies on him for monetary support. *Id.* His partner, his partner's daughter, and the daughter's two sons also rely on him. *Id.* These two young men are finishing up engineering school and rely on Mr. Gonzalez Guardado's payments back home to attend school. *Id.* He has cared for the two as his own children since they were born. *Id.* Since Gonzalez Guardado's detention, he has been unable to send money to support their education and they have stopped going to school, with just one and two years left in their programs, respectively. *Id.* Mr. Gonzalez Guardado worries for his family while he is detained. *Id.*

E. Mr. Gonzalez Guardado will remain wrongly imprisoned absent this Court's intervention.

44. On information and belief, ICE did not conduct any individualized determination that Mr. Gonzalez Guardado should be arrested and imprisoned. ICE did not show Mr. Gonzalez Guardado a warrant before his arrest nor did anyone tell him that there was a warrant for his arrest. On information and belief, Defendants' Form I-200, Warrant for Arrest of Alien produced on February 20, 2026 in response to Mr. Gonzalez Guardado's Motion to Suppress and Terminate in Immigration Court, was only created after Mr. Gonzalez Guardado's arrest. [8]

[8] ICE'S practice of issuing warrants after an arrest is at issue in litigation out of the Seventh Circuit. *See Castanon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1059 n. 9 (7th Cir. 2025) ("This factual finding is supported by the record and is not clearly erroneous. The district court referenced, among other things, an ICE Academy training presentation which stated, 'Officers may also carry a blank form I-200 for the arrest of each collateral so that an

45. Mr. Gonzalez Guardado has not received a bond hearing. Instead, on information and belief, it is the government's position that Mr. Gonzalez Guardado is subject to mandatory indefinite detention under 8 U.S.C. § 1225(b)(2)(A), a position roundly rejected by courts in this district and incompatible with the structure and plain meaning of the INA.

46. Even after nationwide injunctive relief providing that *Yajure Hurtado*'s interpretation of the law was incorrect, the agencies, including EOIR have continued to follow *Yajure Hurtado* and denying bond hearings for individuals who entered without inspection. *See Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *11 (C.D. Cal. Feb. 18, 2026) ("Respondents choose to disregard this Court's declaration of law and vacatur of unlawful agency action. They instead insist that agency regulations dictating the EOIR's structure require IJs to follow *Yajure Hurtado*.").

47. As a result, Mr. Gonzalez Guardado remains wrongly imprisoned. Without relief from this Court, at 65 years old he faces "the prospect of weeks, months, or years of detention before [his] case [is] resolved either through a grant of permission to remain in the United States or deportation."[9] He will spend this time in a "system [that] has become notorious for unsanitary conditions, inedible food, excessive use of force, racialized abuse, medical neglect, and preventable death."[10]

individual flight risk analysis is not needed.'"). *see also* ABC Article Ex. 5, Mark Rivera et al., *Warrantless Arrests by ICE in Chicago Area Ruled Unlawful by Federal Judge*, ABC 7 (Oct. 8, 2025), https://abc7chicago.com/post/chicago-immigration-enforcement-warrantless-arrests-ice-agents-area-ruled-unlawful-federal-judge/17967144/.

[9] Alina Das, *The Law and Lawlessness of U.S. Immigration Detention*, 138 Harv. L. Rev. 1186, 1189 (2025), https://harvardlawreview.org/wp-content/uploads/2025/02/138-Harv.-L.-Rev.-1186.pdf.

[10] *Id.; see also id.* at 1197 n.69 (collecting sources for this assertion).

LEGAL BACKGROUND

A. Mr. Gonzalez Guardado's detention is governed by 8 U.S.C. § 1226(a), and Respondents' attempt to subject him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) must be rejected.

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

49. Section 1225(b)(2)(A) states that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of [Title 8]." 8 U.S.C. § 1225(b)(2)(A) (emphasis added); *see also Jennings*, 583 U.S. at 302 (confirming mandatory nature of detention pursuant to section 1225(b)(2)(A)). The only mechanism to secure release from detention pursuant to section 1225(b)(2)(A) is through the government's exercise of its purely discretionary and unreviewable authority to grant temporary "parole." *See* 8 U.S.C. § 1182(d)(5)(A).

50. By contrast, section 1226(a) states that, "[o]n a warrant issued by the Attorney General, an alien *may be* arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). Section "1226(a) and its

implementing regulations require ICE officials to make an individualized custody determination." *Hyppolite v. Noem*, No. 25-CV-4304 (NRM)2025 WL 2829511, at *13 (E.D.N.Y. Oct. 6, 2025) (quoting *Velasaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (internal quotation marks omitted)). Specifically, the implementing regulations delegate authority to DHS officers to grant bond or conditional release upon making an individualized determination as to whether a noncitizen subject to section 1226(a) has "demonstrate[ed] . . . that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8); *see also Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *7 (E.D.N.Y. Dec. 8, 2025) (reiterating regulatory requirement for individualized determination); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), 2025 WL 3314420, at *28 (E.D.N.Y. Nov. 28, 2025) (same); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 493 (S.D.N.Y. 2025) (same).

51. If, after this individualized determination, ICE chooses to continue keeping a noncitizen in custody pursuant to section 1226(a), the noncitizen may ask for a custody redetermination hearing before the immigration judge. At such a hearing, the immigration judge may release the noncitizen on bond. 8 C.F.R. §§ 1003.10, 1003.19.

52. For decades after the statutes' enactments, the government applied section 1226—and section 1226 alone—to noncitizens apprehended in the interior of the country. *See, e.g.*, Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). This longstanding application respects the plain meaning of the statutes.

53. But on July 8, 2025, ICE abruptly changed its policy to assert that virtually all noncitizens present in the United States without admission are subject to mandatory detention

under section 1225(b)(2)(A). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws. Ass'n (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of memorandum containing interim guidance).

54. On September 5, 2025, the BIA followed suit in a precedential opinion that largely adopted ICE's position. *See Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025). The decision was binding on immigration judges throughout the country, including in New York,[11] until the Central District Court of California vacated it on February 18, 2026. *Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284, at *11 (C.D. Cal. Feb. 18, 2026). The vacatur order came after EOIR continued to apply *Matter of Yajure Hurtado* despite the Central District Court of California's prior ruling that the reasoning in *Yajure Hurtado*, which tracked DHS' policy expanding the scope of mandatory detention, was unlawful.[12] *Bautista v. Santacruz*, No. 25 5:25 Civ. 1873 (SSS), 2025 WL 3713987, at *25 (C.D. Cal. Dec. 18, 2025), *amending* 2025 WL 3288403, (C.D. Cal. Nov. 25, 2025). Upon information and belief, EOIR has not issued updated guidance for Immigration Judges after the Central District Court of California's vacatur order.

55. The theory that ICE and the BIA adopted in *Matter of Yajure Hurtado* has no basis in law. "Respondent's novel and expansive construction of § 1225(b)(2)(A) fails to withstand scrutiny because it disregards the plain meaning of that provision, would render § 1226

[11] While binding on immigration judges, the BIA's interpretations of the INA in administrative decisions "are not entitled to substantial deference." *Hyppolite*, 2025 WL 2829511, *11 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024)). Rather, "[c]ourts must exercise independent judgment in determining the meaning of statutory provisions." *Loper Bright Enters.*, 603 U.S. at 394. For the reasons laid out in the Petition, the Court should reject any invitation to defer to, or otherwise adopt, the BIA's reasoning in *Yajure Hurtado*. *See, e.g.*, *Hyppolite*, 2025 WL 2829511, at *11 ("[T]he Court respectfully but wholly disagrees with the reasoning of the BIA [in *Yajure Hurtado*]." (citation omitted)); *see also J.U. v. Maldonado*, 805 F. Supp. 3d 482, 491 (E.D.N.Y. 2025) (rejecting *Yajure Hurtado*). *Yajure Hurtado* is especially unpersuasive because it departs radically from decades of interpretation and practice. *See, e.g.*, *Yajure Hurtado*, 29 I&N Dec. at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection.").

[12] Practice Alert Ex. 4.

and a recent amendment to it superfluous, and is inconsistent with [the] Supreme Court's prior statutory interpretations." *J.U.*, 805 F. Supp. 3d 482, 494 (E.D.N.Y. 2025); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025); *Hyppolite*, 2025 WL 2829511, at *12 (holding same and listing cases reaching same conclusion); *see also Bautista*, 2025 WL 3713987, at *11–12 (rejecting the government's "expansive interpretation of 'applicants for admission'" because it "would effectively nullify a portion of the INA," and agreeing with "[p]etitioners' interpretation—that § 1226(a) is the governing authority and that they are not 'applicants for admission,'" which it found "is not contrary to the statutory scheme of the INA").

i. Plain meaning

56. As an initial matter, Respondents' newly-minted interpretation contradicts the plain meaning of section 1225(b)(2)(A). That statute specifically restricts its application to "aliens seeking admission." While the term is not defined in the INA, it "necessarily implies some sort of present-tense action." *Lopez Benitez*, 795 F. Supp. 3d at 488 (internal quotation marks and citation omitted). "'[C]ourts have repeatedly held that the term requires 'some active desire of process toward admission'" as that term is used at 8 U.S.C. § 1101(a)(12)(A), *i.e.*, "the lawful entry of the alien into the United States after inspection and authorization by the immigration officer." *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *22 (quoting *Tumba v. Francis*, No. 25 Civ. 8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) and citing *Martienz v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)). Under a straightforward reading of the statute, the term does not include noncitizens who "ha[ve] already 'entered' the country (albeit unlawfully)" and who therefore do not "continue[] to be actively 'seeking' such lawful entry at this time." *Lopez Benitez*, 795 F. Supp. 3d at 488. This is so even though someone like Petitioner continues to be "treated as an 'applicant for admission' under various provisions of the statute." *Id.*

ii. Canon against surplusage

57. Moreover, "Respondents' position violates the canon of statutory interpretation that 'every clause and word of a statute should have meaning.'" *Hyppolite*, 2025 WL 2829511, at *9 (citing *United States, ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 432 (2023); *see also Pulsifer v. United States*, 601 U.S. 124, 149 (2024) ("In a given statute, . . . different terms usually have different meanings."). Congress specified that section 1225(b)(2)(A) applies to a subclass of applicants for admission, namely to noncitizens seeking admission. "[I]f the mandatory detention provision in § 1225(b)(2) applied to *all* noncitizens who are 'applicants for admission,' then there would be no need for Congress to have separately referenced a sub-category of persons 'seeking admission' in the specific section that relates to mandatory detention." *Hyppolite*, 2025 WL 2829511, at *9 (emphasis in original). *See Lopez Benitez*, 795 F. Supp. 3d at 489 ("[B]y treating the terms 'applicant for admission' and 'alien seeking admission' as synonymous, Respondents' interpretation violates a principle that Congress is presumed to have acted intentionally in choosing different words in a statute, such that different words and phrases should be accorded different meanings."). Here, too, 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." *Hyppolite*, 2025 WL 2829511, at *9 (listing cases holding same).

58. For similar reasons, "[t]he government's position is [also] 'at odds with one of the most basic interpretative canons, that a statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.'" *Sarmiento Guerrero v. Noem*, No. 25 Civ. 5881 (EK), 2025 WL 3214787, at *4 (E.D.N.Y. Nov. 18, 2025) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)). On Respondents' reading, the term "alien seeking admission"

is surplus language that merely restates the term "applicant for admission," which appears several words earlier in the statute. That reading cannot stand, particularly since the canon against surplusage is at its "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

59. In addition to introducing surplus language into section 1225(b)(2)(A) itself, Respondents' reading renders superfluous a significant portion of Congress' immigration detention scheme: mandatory detention at 8 U.S.C. § 1226(c). There, Congress created a carve-out from section 1226(a) discretionary detention for noncitizens who are "inadmissible by reason of" certain outcomes in criminal proceedings, instead subjecting them to mandatory detention without a bond hearing. 8 U.S.C. § 1226(c). "[T]his mandatory detention under § 1226(c) would be unnecessary if[, as Respondents argue,] all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions." *Singh v. Maldonado*, No. 26-CV-00019 (OEM), 2026 WL 233216, at *7 (E.D.N.Y. Jan. 29, 2026) (quoting *Hasan v. Crawford*, No. 25 Civ. 1408, 2025 WL 2682255, at *8 (E.D. Va. Sept. 19, 2025)); *see also Hyppolite*, 2025 WL 2829511, at *10 (noting that Respondents' reading would render "'pointless'" Congress' recent expansion of the class of noncitizens subject to section 1226(c) mandatory detention, *see* Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(E)(1)) (citation omitted)).

iii. Historical distinction

60. Finally, the government's new interpretation eviscerates the distinction "our immigration laws have long made . . . between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958); *see also Zadvydas v. Davis*, 533 U.S.

678, 693 (2001) ("The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law."). In *Jennings*, the Supreme Court reaffirmed that this longstanding distinction remains for the detention scheme enacted at sections 1225 and 1226, holding that the former concerns "aliens seeking admission into the country" and the latter "aliens already in the country." 583 U.S. at 289; *Sarmiento Guerrero*, 2025 WL 3214787, at *5; *Padilla Molina*, No. 25 Civ. 6526 (JMA), 2025 WL 3718728, at *4 (E.D.N.Y. Dec. 23, 2025).

iv. *Bautista* classwide relief

61. Finally, Respondents' arguments have been rejected in the *Bautista v. Santacruz* class action in which the district court granted nationwide declaratory relief to a class of "noncitizens who already arrived in the United States without inspection, or will enter the United States and not face inspection[,]" and who are "subject to mandatory detention due to Respondents' improper interpretation of the INA." 2025 WL 3713987, at *25. The court declared that class members are detained under section 1226(a) and vacated the DHS policy subjecting them to mandatory detention under section 1225(b)(2)(A). 2025 WL 3713987, at *32; *see also Bautista*, 2026 WL 468284, at *10 (enforcing vacatur judgment). On information and belief, Mr. Gonzalez Guardado is a member of this class. Therefore, "the final judgment in [*Bautista*] . . . would presumably have preclusive effect in this litigation." *Ulloa Montoya*, No. 25-CV-06363 (JMA), 2025 WL 3718694, at *4 (E.D.N.Y. Dec. 23, 2025).

62. When ICE arrested Mr. Gonzalez Guardado outside of a Home Depot on Long Island on January 8, 2026, he was "already in the country," and accordingly he "may only be subject to detention as a matter of discretion under § 1226(a)." *See J.U.*, 805 F. Supp. 3d at 496 (finding that because the petitioner, once released from detention at the border, had "passed

through [the United States'] gates," was therefore "already in the country" and only subject discretionary detention under section 1226(a)).

63. A half-year after its formulation, "hundreds of district court decisions . . . have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA." *Padilla Molina*, 2025 WL 3718728, at *3; *see also Rodriguez-Acurio*, 2025 WL 3314420, at *23 (noting that, in 350 of 362 cases surveyed, district courts rejected Respondents' argument) (citing *Barco Mercado*, No. 25-CV-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025)).[13]

64. The Court should reject Respondents' erroneous reinterpretation of sections 1225(b)(2)(A) and 1226(a) and Respondents' massive expansion of authority to subject Petitioners like Mr. Gonzalez Guardado to mandatory detention.

B. Respondents violated Mr. Gonzalez Guardado's right to procedural due process.

65. Mr. Gonzalez Guardado is being detained in violation of his right to procedural due process.

66. The Fifth Amendment to the United States Constitution provides that "[n]o person shall be . . . deprived of life, liberty, or property without due process of law." U.S. Const. amend V. The Due Process Clause applies to noncitizens in the United States "whether their presence

[13] *Compare Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F. 4th 1048, 1060–62 (7th Cir. 2025) (finding that the government defendants were not likely to prevail on this issue because "ICE's authority to detain a noncitizen discovered within the country derives from § 1226(a) and not from § 1225(b)[,]" and "Defendants' construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous, violating one of the cardinal rules of statutory construction.") *with Buenrostro-Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *4–*7 (5th Cir. 2026) (reversing and remanding the district court's judgment "that the phrase 'seeking admission' in § 1225(b)(2)(A) . . . only applies to individuals 'currently and actively seeking to be admitted to the United States when [they are] apprehended'" at the border and holding that noncitizens who entered the United States without inspection and were arrested by ICE while living in the United States were nonetheless "seeking admission" and thus covered by section 1225(b)(2)).

here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. at 693 (citations omitted).

67. In the Second Circuit, the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 255 (1976), is used to evaluate due process challenges to immigration detention. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020) (using the *Matthews* factors). These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Id.* (quoting *Matthews*, 424 U.S. at 348) (internal quotations omitted.

i. Petitioner's Private Interest

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

ii. Risk of Erroneous Deprivation of Petitioner's Interest

69. With respect to the second factor, the "procedures used" during and after ICE took Mr. Gonzalez Guardado into custody entail an exceptionally high risk of erroneous deprivation. *See, e.g.*, *Mira Castro v. Noem*, No. 2:26-cv-696 (NJC), 2026 WL 369713, at *4 (E.D.N.Y. Feb. 10, 2026) (noting the "high risk of erroneous deprivation" where ICE "failed to provide *any* notice or any opportunity to be heard" by arresting petitioner without a warrant and without having first

made an individualized custody determination, and because "there is absolutely nothing in the record showing that [petitioner] presents a flight risk or danger to the community"); *see also Aguinaga Castellon v. Doe*, No. No. 2:26-cv-647 (NJC), 2026 WL 326947, at *3–*4 (E.D.N.Y. Feb. 7, 2026) (same)).

70. ICE took Mr. Gonzalez Guardado into detention (1) without conducting the individualized assessment required by 8 U.S.C. § 1226(a) and its implementing regulations and (2) in the absence of a warrant of arrest or of any circumstances permitting a warrantless arrest under 8 U.S.C. § 1357(a)(2). *See, e.g., Lopez Benitez*, F. Supp. 3d at 495 ("The purpose of requiring an exercise of discretion [under § 1226(a)] prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty."). Indeed, even if it had conducted an individualized assessment, ICE would have had no basis to determine based on the record before it and the facts in the case that Mr. Gonzalez Guardado presents a danger to the community or a flight risk.[14]

71. Moreover, ICE did not know Mr. Gonzalez Guardado's immigration status, nor did they ask him what his immigration status was. They also never provided him any explanation for his arrest and detention. *See e.g., Rocano Buestan v. McShane*, No. 25-CV-8544 (JGLC), 2025 WL 3496361, at *4–*5(S.D.N.Y. Dec. 5, 2025) (finding a high risk of erroneous deprivation when ICE agents detained a man without knowing his immigration status or providing any reason for his initial detention). His detention was, and remains, essentially devoid of process.

72. At the time it arrested him, ICE also failed to provide Mr. Gonzalez Guardado with notice that he was subject to mandatory detention. *See, e.g., Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, *5 (S.D.N.Y. Nov. 14, 2025) (finding the risk of erroneous deprivation

[14] *See* flight risk discussion *infra* Section B(iii).

significant where, among other relevant factors, the petitioner was not afforded notice or an opportunity to be heard); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 364 (S.D.N.Y. 2019) (ordering release of immigration detainee where he "was completely deprived of written notice"); *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950) ("The notice must be of such nature as reasonably to convey the required information. . . ." (citation omitted)).

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

74. The second *Mathews* factor therefore also weighs heavily in Mr. Gonzalez Guardado's favor.

iii. Government's Interest

75. As to the third *Mathews* factor, the preceding considerations heavily outweigh any interest Respondents have in subjecting Mr. Gonzalez Guardado to continued detention, or the burden of any substitute procedures. 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 (internal quotations and citations omitted); *see also Hyppolite*, 2025 WL 2829511, at *14 (quoting *Valdez v. Joyce*, 803 F. Supp. 3d at 218 (S.D.N.Y. 2025) ("The government's interest in detaining people on a discretionary, case by case basis under § 1226(a) includes 'ensuring the appearance of aliens at future immigration

proceedings' and 'preventing danger to the community.'"). Absent evidence in the record that a noncitizen is dangerous or a flight risk—and here there is none—the government cannot demonstrate a significant interest in their detention.

76. Nothing in the record shows that Mr. Gonzalez Guardado was at risk of fleeing or failing to appear at future immigration proceedings. First, Mr. Gonzalez Guardado has lived in the same borough in the United States for nearly two decades, consistently working and sending money back to his family in El Salvador, most recently to support his putative grandsons' higher education. Gonzalez Guardado Decl. Ex. 1, ¶¶ 3, 9, 27. When ICE arrested Mr. Gonzalez Guardado, he was not engaging in any criminal activity. *Id.* at ¶¶ 11–13. He had simply been standing outside a Home Depot, drinking coffee and waiting for his employer to arrive. *Id.* Nothing in his behavior, or otherwise in the record, shows that he was looking for an opportunity to flee or was at risk of fleeing, even when he noticed that the uniformed individuals running towards him were ICE officers. *Id.* Further, while "the facts informing [the] assessment may vary," courts have found that factors such as "present[ing] 'conflicting documents,'" to officers, "'ha[ving] been picked up before,'" admitting to previous removal, or "appear[ing] 'extremely nervous' as if 'looking for an opportunity to run'" might point to an individual's higher likelihood of escape. *Escobar Molina U.S. Dep't of Homeland Sec.*, No. 25 Civ. 3417 (BAIT), 2025 WL 3465518, at *13 (D.D.C. Dec. 2, 2025) (internal citations omitted). While these factors may not be exhaustive, none of them apply to Mr. Gonzalez Guardado, who was never asked any questions prior to his arrest from which these factors could be gleaned. The record thus contains evidence of no similar factors that could characterize Mr. Gonzalez Guardado as a flight risk.

77. In addition, in this case there are no "fiscal and administrative burdens that the additional or substitute procedural requirement[s] would entail," because the bond hearing has not

taken place. *See Hyppolite*, 2025 WL 2829511, at *14 (holding that the burden of continued deprivation still easily outweighed any countervailing fiscal or administrative burdens where the bond hearing, a process the government has set procedures for, had not yet been conducted). "By contrast, the fiscal and administrative burdens of keeping [the Petitioner]—who [was found to not be a] flight risk nor a danger to the community — detained are extremely high." *Id.* at *15 (detailing brutal conditions of confinement at MDC).

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

C. Mr. Gonzalez Guardado's arrest without a warrant violates the INA and the Fourth Amendment.

79. Under the INA, immigration officers must generally have an administrative warrant of arrest to take a noncitizen into civil immigration custody. *See Arizona v. United States*, 567 U.S. 387, 407–08 (2012). Pursuant to 8 U.S.C. § 1226(a)—the INA provision governing Mr. Gonzalez Guardado's arrest—immigration officers are only entitled to arrest and detain an individual pending a removal decision "*if a 'warrant [is] issued* by the Attorney General." *Morales v. Chadbourne*, 793 F.3d 208, 216 (1st Cir. 2015) (emphasis added) (quoting 8 U.S.C. § 1226(a)). *Chogllo Chafla v. Scott*, No. 2:25 Civ. 437 (SDN), 2025 WL 2688541, at *11 (D. Me. Sept. 21, 2025) (ordering release to remedy warrantless arrest and noting that "absent a warrant a noncitizen may *not* be arrested and detained under section 1226(a)") (emphasis in original), *appeal filed* Nov. 6, 2025; *accord Ahmed M. v. Bondi*, No. 25 Civ. 4711 (ECT/SGE), 2026 WL 25627, at *3 (D. Minn. Jan. 5, 2026); *J.A.C.P. v. Wofford*, No. 1:25 Civ. 1354 (KES), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025); *Florida v. United States*, 660 F. Supp. 3d 1239, 1276 (N.D. Fla. 2023), *appeal dismissed*, 2023 WL 5212561 (11th Cir. July 11, 2023).

80. However, "[i]f no federal warrant has been issued, [immigration] officers have more limited authority." *Arizona*, 567 U.S. at 408 (citing 8 U.S.C. § 1357(a)). The INA and its implementing regulations have specified an exception to the warrant requirement, which must be applied within the confines of the Fourth Amendment's constitutional protections. Respondents, however, have not met the requirements for this exemption. Their warrantless arrest of Mr. Gonzalez Guardado thus violates both the INA and the Fourth Amendment.

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

82. While under these statutory and regulatory requirements, the officer must have "reason to believe" that the noncitizen is violating the law and is likely to escape, this "reason to believe" standard must still comport with the requirements of the Fourth Amendment. *See Trump v. Illinois*, 146 S. Ct. 432, 436 n. 4 (2025) (Kavanaugh, J. concurring) (explaining that immigration stops must meet the mandates of the Fourth Amendment).

83. Accordingly, "to avoid running afoul of the Fourth Amendment," the phrase "reason to believe" as used in section 1357(a)(2) is "'considered the equivalent of probable cause.'" *Escobar Molina v*, 2025 WL 3465518, at *13 (quoting *Au Yi Lau v. USCIS*, 445 F.2d 217, 222–23 (D.C. Cir.

1971) (additional citations omitted); *see also Morales*, 793 F.3d at 216 (collecting cases); *Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) (same); *Baker v. McCollan*, 443 U.S. 137, 142 (1979) ("[T]he Fourth Amendment requires . . . a fair and reliable determination of probable cause as a condition for any significant pretrial restraint of liberty." (citation omitted)). Thus, prior to conducting a warrantless arrest, immigration officers must have *probable cause* to believe both that a person is in the United States in violation of a relevant law, ***and*** that they are a flight risk.

84. Here, Respondents have not fulfilled the requirements of this statutory provision as they cannot show that they had probable cause to believe Mr. Gonzalez Guardado was in the United States in violation of the law nor that he was a flight risk. ICE officers did not ask Mr. Gonzalez Guardado any questions before arresting him. Gonzalez Guardado Decl. Ex. 1, ¶¶ 14, 17, 20. Moreover, Mr. Gonzalez Guardado had never been arrested by any law enforcement agency before, *id.* at ¶ 10, such that there would be no biometric records for him that ICE could have used prior to Mr. Gonzalez Guardado's arrest to determine his immigration history, if any. Thus, upon information and belief, ICE did not have any probable cause to arrest Mr. Gonzalez Guardado.

85. The requirement for probable cause of flight risk "is not mere verbiage." *Ramirez Ovando v. Noem*, No. 25 Civ. 3293467, 2025 WL 3293467, at *2 (D. Colo. Nov. 25, 2025) (quoting *United States v. Pacheco-Alvarez*, 227 F. Supp. 3d 863, 889 (S.D. Ohio 2016), and citing *Arizona*, 567 U.S. at 394). Rather, it requires "ICE officers [to] make a 'particularized inquiry' that the subject is likely to abscond." *Id.* (quoting *Moreno v. Napolitano*, 213 F. Supp. 3d 999, 1007–08); *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) ("Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person."); *Maryland v. Pringle*, 540 U.S. 366, 372 (2003) ("We have stated . . . that the substance of

all the definitions of probable cause is a reasonable ground for belief of guilt and that the belief of guilt must be particularized with respect to the person to be searched or seized." (internal quotations and citations omitted)).

86. ICE entirely failed to make a "particularized inquiry" into whether Mr. Gonzalez Guardado was likely to escape. Nothing in the record provides any indication that DHS had *considered* Mr. Gonzalez Guardado's potential to flee prior to arresting and detaining him, let alone that it had determined that he *was* likely to escape before a warrant could be obtained.

87. Any post-hoc justification of Mr. Gonzalez Guardado's arrest would be insufficient to remedy the statutory and constitutional violation here inflicted. *See, e.g.*, *Ramirez Ovando*, 2025 WL 3293467, at *10–11 (rejecting post hoc warrants as a cure to a violation of section 1357(a)(2)) (citing *Castañon Nava v. Dep't of Homeland Sec.*, 435 F. Supp. 3d 880, 904 (N.D. Ill. 2020)).

88. Even if the immigration officers had made a "particularized inquiry" in the split seconds before arresting Mr. Gonzalez Guardado and determined him to be a flight risk, their determination could not be upheld.[15]

89. ICE's arrest of Mr. Gonzalez Guardado without a warrant thus violates the INA and the Fourth Amendment.

D. Immediate release is the proper remedy for Respondents' lawless detention of Mr. Gonzalez Guardado.

90. Immediate release is the appropriate remedy for Respondents' unlawful detention of Mr. Gonzalez Guardado. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475,

[15] *See* flight risk discussion *supra* Section B(iii).

484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release." (citation omitted)).

91. No procedural alternative to release can serve as an effective remedy. *See, e.g.*, *Rodriguez-Acurio v. Almodovar*, No. 2:25 Civ. 6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out."); *Tumba*, 2025 WL 3079014, at *8–9 (ordering release); *Hyppolite*, 2025 WL 2829511, at *16 (same). Mr. Gonzalez Guardado's detention was unlawful from the moment he was arrested and then taken into custody. Respondents afforded him *no* process before detention and have baselessly asserted authority to subject him to mandatory detention. Immediate release is the appropriate remedy.

CLAIMS FOR RELIEF

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

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

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

94. Petitioner's detention is governed by section 1226(a), as established by DHS's binding law and longstanding historical practice. Yet DHS contends, following BIA caselaw, that Petitioner is subject to mandatory detention under § 1225(b)(2).

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

96. ICE did not conduct an individualized determination of the propriety of Mr. Gonzalez Guardado's detention before it detained him.

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

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

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

99. 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.

100. 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.

101. Here, all three factors weigh in favor a finding that Respondents have violated Mr. Gonzalez Guardado's right to procedural due process by asserting unlawful authority to

subject him to mandatory detention, by affording him no process before detaining him, and by providing him no way to meaningfully contest his unlawful detention.

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

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

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

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

105. Respondents did not satisfy both prongs of this test, and a post-hoc arrest warrant does not authorize them to make an arrest under 8 U.S.C. § 1357(a)(2). Therefore, Mr. Gonzalez Guardado's arrest and detention without a warrant violated the INA.

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

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

107. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall

issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized." U.S. Const. amend. IV.

108. A warrantless immigration arrest conducted without probable cause violates the Fourth Amendment's prohibition on unreasonable searches and seizures. *See, e.g., Trump v. Illinois*, 146 S. Ct. at 436 n. 4 (2025) (Kavanaugh, J. concurring) (explaining that immigration stops must meet the mandates of the Fourth Amendment). This is true even if an arrest warrant was created post-arrest.

109. Because Respondents arrested Mr. Gonzalez Guardado without a warrant and a showing of probable cause, his detention violates the Fourth Amendment.

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

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

111. The Administrative Procedure Act ("APA") permits a reviewing court, as relevant here, to "hold unlawful and set aside agency, findings, and conclusions found to be—(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law. . . ." 5 U.S.C. § 706(2).

112. Agency action is arbitrary and capricious or an abuse of discretion where the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could

not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

113. Mr. Gonzalez Guardado's detention is final agency action reviewable under the APA because it marks the consummation of DHS's decision-making process and determines his rights under law.

114. Mr. Gonzalez Guardado's detention violates the APA in at least four ways:

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

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

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

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

115. Respondents' detention of Mr. Gonzalez Guardado therefore violates the APA.

SIXTH CAUSE OF ACTION
VIOLATION OF THE *ACCARDI* DOCTRINE

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

117. The *Accardi* doctrine holds that government agencies are bound to follow their own rules and internal procedures that regulate the rights and interests of others. *See*; *Montilla v.*

INS, 926 F. 2d 162, 166-67 (2d Cir. 1991) (explaining the *Accardi* doctrine) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954))

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

119. Respondents' detention of Mr. Gonzalez Guardado therefore violates the *Accardi* doctrine.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[16]
3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty;
4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are

[16] *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 Civ. 1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9. *See also* Order, *Ozturk v. Hyde*, No. 25 Civ. 374 at 68 (WKS) (D.Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

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

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

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

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

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

Dated: February 27, 2026

Respectfully submitted,

/s/ Stephanie Cordero

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**Reciprocity admission pending*