UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Boris CCOYLLO ASTO,
Petitioner,

v.

Anthony J. LAROCCO, in his official capacity as warden of the Nassau Correctional Center; William JOYCE, in his official capacity as Acting Field Office Director of New York, Immigration and Customs Enforcement; Todd LYONS, in his official capacity as Acting Director U.S. Immigration and Customs Enforcement; Markwayne MULLIN, in his official capacity as Acting Secretary of Homeland Security; and Pamela Jo BONDI, in her official capacity as United States Attorney General.

Respondents.

Civil Action No. 26-1338

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. This case challenges the unlawful detention of Boris Ccoyllo Asto ("Petitioner" or "Mr. Ccoyllo Asto") a fourty-one (41) year-old father who was arrested and re-detained without any notice or warning on March 6, 2026 by Respondents, Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE" or "government"). Petitioner is in the physical custody of Respondents at the Nassau County Correctional Center. He now faces unlawful detention because DHS has concluded that he is subject to mandatory detention. Petitioner filed a Form I-589, Application for Asylum and Withholding of Removal ("asylum application") with U.S. Citizenship and Immigration Services ("USCIS").

2. There have not been—nor have Respondents alleged any—changes since Petitioner was released from immigration detention on parole under section 212(d)(5)(A) of the Immigration and Nationality Act. Moreover, there have been no changed circumstances as to whether Petitioner is a flight risk or danger to the community. On the contrary, Petitioner and his family–composed of his domestic partner and their two minor daughters–have established a new life in New York City since they arrived in the United States over three years ago.

3. Petitioner entered the United States on or about December 30, 2022 and was in immigration detention for approximately four days. Petitioner was paroled into the United States by Respondents on or about December 31, 2022. Until his sudden arrest and re-detention and without any prior notice or warning on March 6, 2026, Petitioner was living and lawfully working as a food delivery worker when arrested and placed in immigration detention.

4. Petitioner has never been arrested, charged, or accused of any criminal conduct. Petitioner does not present a flight risk, as demonstrated by his goal of gaining permanent lawful status and creating a safe, stable life alongside his family.

5. Petitioner respectfully asks this Court to hold that his arrest was unlawful, to hold that his continued detention is unlawful, and to order his release from custody. Petitioner also respectfully asks that this Court order Respondents not to transfer him outside of the District for the duration of this proceeding.

PARTIES

6. Petitioner Boris Ccoyllo Asto is alleged to be a citizen of Peru who has been in immigration detention since March 6, 2026. Petitioner 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).

7. Respondent Anthony J. Larocco is named in official capacity as warden of the Nassau County Correctional Center. Respondent Larocco is a legal custodian of Petitioner.

8. Respondent William Joyce is named in his official capacity as the Acting Field Office Director for ICE's New York Field Office. Respondent Joyce is a legal custodian of Petitioner.

9. Respondent Todd Lyons is named in his official capacity as Acting Director of ICE. Respondent Lyons is a legal custodian of Petitioner.

10. Respondent Markwayne Mullin is named in his official capacity as Acting Secretary of Homeland Security. As head of the DHS, the agency tasked with enforcing immigration laws, Secretary Mullin is Petitioner's ultimate legal custodian.

11. Respondent Pamela Jo Bondi is named in her official capacity as the Attorney General of the United States. In her official capacity, Secretary Bondi is responsible for the administration of the immigration laws as exercised by the EOIR, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner's removal and custody proceedings and for the standards used in those proceedings. As such, she is a legal custodian of Petitioner. Secretary Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

JURISDICTION AND VENUE

12. 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).

13. 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).

14. 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 Nassau County Correctional Center, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

15. Petitioner is not required to exhaust administrative remedies because doing so would be futile.

16. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 at *3 (E.D.N.Y. Oct. 5, 2025) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

17. 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).

18. Petitioner's case meets every requirement. Not only will he face irreparable injury if his detention continues, and not only does his petition raise substantial constitutional questions, but intervening events have rendered administrative appeal futile and unable to provide a genuine opportunity for adequate relief.

19. On September 5, 2025, the Board of Immigration Appeals ("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). Thus, the BIA will be bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release. This is true although the overwhelming majority of district courts in the country that have heard a challenge to this reading of the statute has rejected it out of hand.

STATEMENT OF FACTS

20. Petitioner arrived in the United States on or around December 30, 2022. He was paroled into the United States by immigration authorities at the southern border on December 31, 2022.

21. He resides with his domestic partner of two decades and their daughters, [redacted] in New York City.

22. On March 6, 2026, at approximately 11:30 a.m, Petitioner was arrested while working as a food delivery worker. At the time of his arrest, he was driving for his delivery job in Long Island. He was stopped and arrested by ICE during their current operation surge in Long Island. Petitioner is now detained at the Nassau County Correctional Center.

23. DHS placed Petitioner in removal proceedings before the Immigration Court pursuant to 8 U.S.C. § 1229a on March 6, 2026.

24. Petitioner has been consistently employed in the United States. He has not committed any crimes. He has no criminal history in the United States or in any other country. He supports his daughters who are students, one in elementary school and the other in high school. He and his family filed an asylum application with USCIS. Petitioner is neither a flight risk nor a danger to the community.

LEGAL BACKGROUND

I. The Government's Statutory Authority to Detain Noncitizens

25. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

26. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge. *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 individuals who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

27. 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).

28. 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).

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

30. 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.

31. Under the Section 1226 framework, release is appropriate once DHS considers "whether the noncitizen is a 'danger to property or persons' and whether he is 'likely to appear for any future proceeding.' 8 C.F.R. § 1236.1(c)(8); 8 C.F.R. § 236.1(c)(8)." *Hyppolite v. Noem,* 808 F. Supp. 3d 474, 485 (E.D.N.Y. 2025) (*citing to 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 ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

32. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S.281, 289 (2018) (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

33. 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).

34. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), individuals 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) rather than § 1225(b)(2). *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.

35. As courts in this District and others have almost uniformly held, Section 1225(b)(2)(A) does not apply to noncitizens, like Petitioner, who are detained while living in the United States. *Hyppolite,* 808 F. Supp. 3d at 487 ("In considering § 1225(b)(2)(A) within its

statutory context, it was clearly intended to apply to noncitizens who are presently seeking to enter the United States, and not those, like [Petitioner], who have lived in the country for almost three years."); *Yin v. Maldonado*, No. 26-CV-0103 (PKC), 2026 WL 295389, at *2 (E.D.N.Y. Feb. 4, 2026) ("Because Petitioner arrived in 2023, was released on his own recognizance, and spent several years living and working in the United States, he was not "seeking admission" when ICE agents arrested him on November 21, 2025, and therefore is not subject to mandatory detention."); *Quituizaca v. Bondi*, No. 6:25-CV-6527-EAW, 2025 WL 3264440, at *4 (W.D.N.Y. Nov. 24, 2025) ("the Court disagrees that an individual like [Petitioner] who has been living in this country for almost 10 years, married to U.S. citizen with whom he has a child (also a U.S. Citizen), actively employed and in the process of formally seeking legal status—can be arrested and detained with no eligibility for bond under § 1225(b)(2)."); *Lomeu v. Soto*, 25-CV-16589, 2025 WL 2981296 (D.N.J. Oct. 23, 2025) (holding that the detention of a noncitizen who has resided in the United States for years under Section 1225(b) "is incompatible with the overall statutory scheme" and "completely ignore[s] the plain and longstanding distinction in U.S. immigration law between those noncitizens who are entering the country and those who remain after entering.") (*citing Jennings*, 583 U.S. at 286).

36. Courts in this District and throughout the United States have ultimately decided *that when Section 1225(b)(2) is applied unlawfully, release is the most appropriate remedy. J.U. v. Maldonado*, 25-CV-04836, 2025 WL 2772765, at *3 (E.D.N.Y. Sept. 29, 2025) (noting that "there was no 'initial decision' as ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a); thus, a bond hearing for a post-deprivation review is wholly inadequate to remedy that unlawful detention"); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025); *Lopez Benitez*, 2025 WL 2371588 at

*15 (concluding that detention while waiting for a bond hearing is "inadequate to address the denial of due process that Mr. Lopez Benitez was entitled to in the first instance"); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (finding that a custody redetermination hearing does not cure any constitutional violations and that such a remedy "rings hollow"); *Rodriguez v. Rokosky*, 25-CV-17419, 2025 WL 3485628 at *3 (D.N.J. Dec. 3, 2025) (noting that the only appropriate remedy to an unlawful arrest and detention is an immediate release and declining to allow Respondents to cure an unlawful detention through a post hoc justification); *Lepe v. Andrews*, No. 1:25-CV-01163, 2025 WL 2716910, at 10 (E.D. Cal. Sept. 23, 2025); *Hasan v. Crawford*, No. 1:25-CV-1408, 2025 WL 2682255, at *12–13 (E.D. Va. Sept. 19, 2025).

37. Petitioner was arrested after over three years of continuous presence in the United States, not while "seeking admission." Petitioner and his family applied for asylum and complied with their biometrics requirement under that form of relief. Further, his pending asylum application is not legally considered a process of "seeking admission." *See Lopez Benitez*, 2025 WL 2371588, at *6 n.7; *Garcia-Mendez v. Lynch*, 788 F.3d. 1058 (9th Cir. 2015).

38. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, 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.*

II. Noncitizens' Procedural Due Process Rights

39. 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).

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

41. 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).

42. 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: (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." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

43. In light of a noncitizen's due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and 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).

44. 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).

45. 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.*

46. 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 in situations 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).

47. Recent decisions by federal courts in various jurisdictions 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. This is particularly clear where the government has already made determination that a petitioner is not a flight risk or a danger, and no change of circumstance justifies re-detention. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

48. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before his summary arrest while working as a delivery driver. *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).

49. 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 U.S.

50. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Although he submits this is insufficient to vindicate the immense due-process violation inherent in his race-based detention, a bond hearing is a mechanism to mitigate his continued unlawful confinement.

III. Petitioner's Re-Arrest Violated the Fourth Amendment to the U.S. Constitution (unlawful arrest); 5 U.S.C. §§ 702, 706.

51. At the time of Petitioner's arrest, he had been living at liberty pursuant to a determination by federal immigration authorities.

52. Respondents lacked reliable information of changed or exigent circumstances that would justify Petitioner's arrest after federal immigration authorities had already decided he could pursue his claims for immigration relief at liberty. His re-arrest is unreasonable and violates the Fourth Amendment.

53. It is unreasonable under the Fourth Amendment to rearrest a person who has been released from custody based on the same charge that supported the earlier arrest. The Fourth Amendment protects the right of the people to be secure in their persons against unreasonable

seizures. U.S. Const. Amend. IV. "It is axiomatic that seizures have purposes." *Williams v. Dart*, 967 F.3d 625, 634 (7th Cir. 2020). "When those purposes are spent, further seizure is unreasonable." *Id.* Any seizure must be supported by probable cause, which is "strictly tied to and justified by the circumstances which rendered [the initiation of the seizure] permissible." *Terry v. Ohio*, 392 U.S. 1, 18 (1968) (*quoting Warden v. Hayden*, 387 U.S. 294, 310 (1967) (Fortas, J., concurring)); *Arizona v. Johnson*, 555 U.S. 323, 333 (2009). When the purpose of a seizure is accomplished, "[f]urther seizure requires a court order or new cause" as "the original probable cause determination is no justification." *Williams*, 967 F.3d at 634.

54. This requirement "guards against precipitate rearrest." *Carlson v. Landon*, 342 U.S. 524, 546-47 (1952). "Arrest ensures that a suspect appears to answer charges and does not continue a crime, and it safeguards evidence and enables officers to conduct an in-custody investigation." *Virginia v. Moore*, 553 U.S. 164, 173 (2008); *Albright v. Oliver*, 510 U.S. 266, 278 (1994) (same) (Ginsburg, J., concurring); *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (same). When an individual is released on bond, bail, parole, or their own recognizance pending the result of their proceedings, the purpose of their prior arrest has been accomplished. *Williams*, 967 F.3d at 634. As a result, any probable cause justifying the prior arrest is extinguished, and they cannot be rearrested absent changed circumstances. See *Carlson*, 342 U.S. at 546-47; *United States ex rel. Heikkinen v. Gordon*, 190 F.2d 16, 19 (8th Cir. 1951); *United States v. Holmes*, 452 F.2d 249, 260-61 (7th Cir. 1971); *United States v. Swims Under*, 990 F.2d 1265 (table), 1993103768, at *2. (9th Cir. 1993); *cf. Saravia*, 280 F. Supp. 3d at 1176 ("Once a noncitizen has been released, the law prohibits federal agents from re-arresting him merely because he is subject to removal proceedings.").

55. Here, at the moment of seizure, Petitioner (a) had a pending asylum application with USCIS and (b) had a stable life with his domestic partner and their two minor daughters.

56. As such, no changed circumstances applied to Petitioner's case, and Respondents did not have probable cause to justify his re-arrest after the prior, extinguished arrest. Now, over three years later, without any change in circumstance, Petitioner was arrested despite not being a danger to the community or a flight risk.

57. By statute and regulation, the Government can only make arrests where the officer has reason to believe that the individual is in the United States in violation of immigration laws and is likely to escape before a warrant can be obtained for his arrest." (citation modified) (citing § 1357(a)(2); §287.8(c)(2)(ii)). *Ramirez Ovando v. Noem*, --- F.Supp.3d ----2025 WL 3293467 (D. Colo. Nov. 25, 2025), at *2. Here, at minimum, the Government did not have an indication that Petitioner was an escape-risk when he was released by DHS more than three years prior to his unnoticed arrest and detention on March 6, 2026.

CLAIMS FOR RELIEF

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

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

59. 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.

60. 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)

SECOND CAUSE OF ACTION:
ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND THE IMMIGRATION AND NATIONALITY ACT
U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)

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

62. 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.

63. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due under the discretionary detention statute, violating both the statute itself and the Due Process Clause of the Constitution.

THIRD CAUSE OF ACTION:
VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION
(Freedom from Unlawful Stop and Seizure)

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

65. 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.

66. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). The Government bears the burden of providing "specific and articulable facts" to support reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). The race of an individual cannot itself create reasonable suspicion, even for a temporary stop. *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975); *Noem v. Vasquez Perdomo*, No. 25A169, --- S.Ct. ----, 2025 WL 2585637, at *3 (Sep. 8, 2025) (Kavanaugh, J., concurring). Officers lacked reasonable suspicion to even approach Petitioner, and certainly lacked probable cause to arrest him.

67. "[T]o establish reasonable suspicion, an officer cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law-abiding population." *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006); *see also Noem v. Vasquez Perdomo*, 606 U.S. __ (2025), 2025 WL 2585637, at *3 (Kavanaugh, J., concurring) ("To be clear, apparent ethnicity alone cannot furnish reasonable suspicion[.]").

68. Petitioner's detention had no basis to stop, search and detain petitioner apart from his race. Rather, his detention was part of a coordinated, indiscriminate sweep of individuals who appeared to be of Hispanic descent in certain communities of New York City. Hispanic individuals are stopped, detained, questioned, and in some cases threatened based solely on their race.

69. Petitioner's detention violates the Fourth Amendment because he was arrested without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855, 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner's Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination before re-arresting and detaining noncitizen in removal proceedings).

70. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado*, 2025 WL 2337099, at *18, *report and recommendation adopted*, 2025 WL 2349133 (ordering habeas petitioner's "release from detention . . . granted because her Fourth Amendment rights were violated.").

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

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

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

73. ICE officers' authority to conduct warrantless arrests is prescribed in 8 U.S.C. 1357(a)(2). That statute requires that officers have "reason to believe" a person is in the U.S. in violation of laws *and* "is likely to escape before a warrant can be obtained for his arrest." That assessment must be individualized.

74. On information and belief, no individualized assessment of flight risk was conducted for petitioner and Respondents did not have probable cause to believe he was likely to escape before a warrant could be obtained.

75. Instead, his detention was part of an operation to stop, question and detain Hispanic New Yorkers based solely on their race and presence in certain neighborhoods of New York. Respondents' policy and practice of making warrantless arrests without the required individualized flight risk analysis is "final agency action" that violates the Administrative Procedure Act. *See Escobar Molina,* 2025 WL 3465518, at *2 ("enjoin[ing] preliminarily defendants from continuing any policy or practice of conducting warrantless civil immigration arrests in the District without making individualized probable cause determinations as to each arrestee's risk of escape, as required by 8 U.S.C. § 1357(a)(2)"). The appropriate remedy is release. *See also Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 945 (D. Minn. 2017) ("because no warrant was issued for Orellana's arrest, Orellana's arrest and continued detention is lawful only if officers acted within their statutory authority for affecting a warrantless arrest [under] Section 1357" and "[t]here is [] no evidence that ICE or any other immigration officer had probable cause to believe that Orellana was 'likely to escape before a warrant can be obtained for his arrest,' the second half of what is needed before a warrantless arrest under § 1357(a)(2) is lawful").

76. 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).

77. Respondents' decision to detain Petitioner and suddenly subject him to mandatory detention under Section 1225(b)(2) as a result of their indiscriminate stop operation, irrespective Petitioner's individual circumstances, is arbitrary and capricious and contrary to law.

78. Respondents' campaign of race-based stops of New Yorkers who appear to be Hispanic is also arbitrary and capricious; contrary to law; and unconstitutional.

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;[1]
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:

[1] *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* 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).

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.

Respectfully Submitted,

Dated: March 6, 2026
Brooklyn, New York

_____/s/_____
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Pro Bono Counsel for Petitioner

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242.

I, Astrid H. Avedissian, Esq., am submitting this verification on behalf of the Petitioner as an attorney for Petitioner. I, or my co-counsel, the events described in the Petition. Based on those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 6, 2026
New York, NY

/s/ Astrid H. Avedissian