UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MELSAR SANDOVAL MARTINEZ,
Petitioner,

v.

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

JUDITH ALMODOVAR,
in her official capacity as Acting Field Office Director, New York City Field Office, U.S. Immigration & Customs Enforcement;

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

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

Respondents.

Civil Action No. _____

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

INTRODUCTION

1. Respondents, U.S. Immigration and Customs Enforcement ("ICE"), are unlawfully subjecting Petitioner Melsar Sandoval Martinez ("Mr. Sandoval Martinez") to mandatory detention under an immigration statute that does not apply to him. Mr. Sandoval Martinez is a 43-year-old man with no criminal convictions who has resided in the United States for over 15 years. Applying an interpretation of the Immigration and Nationality Act ("INA") that has been overwhelmingly rejected by the district courts, the federal government claims that Mr. Sandoval Martinez can be subjected to indefinite detention under 8 U.S.C. § 1225(b)(2).[1] He accordingly brings this habeas petition challenging his unlawful detention.

2. Courts in this and neighboring districts have granted petitions nearly identical to that of Mr. Sandoval Martinez, ordering immediate release or, at a minimum, ordering ICE to show cause why immediate release should not be granted. *See Singh v. Maldonado*, No. 26-CV-00019, 2026 WL 233216, at *8, *10 (E.D.N.Y. Jan. 29, 2026) (Merchant, J.); *Minarcaja Concha v. Lyons*, No. 2:25-CV-6695, --- F. Supp. 3d ---, 2026 WL 215417, at *14, *19 (E.D.N.Y. Jan. 28, 2026) (Choudhury, J.); *Lira Caceres v. Shanahan*, No. 26-CV-00016, 2026 WL 233215, at *8, *11 (E.D.N.Y. Jan. 28, 2026) (Merchant, J.); *Merlo Puerto v. Leeper*, No. 26-CV-405, 2026 WL 206485, at *2 (E.D.N.Y. Jan. 27, 2026) (Morrison, J.); *Covelli-Chaparro v. Bondi*, No. 2:26-CV-118, 2026 WL 118842, at *6, *9 (E.D.N.Y. Jan. 15, 2026) (Choudhury, J.); *Ndiaye v. Francis*, No. 26-CV-0069, 2026 WL 99930, at *3

[1] *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 218 (BIA 2025) (holding that "an Immigration Judge lacks authority to hear" bond requests filed by noncitizens present in the United States without admission, reasoning that such noncitizens they are subject to mandatory detention under 8 U.S.C. § 1225(b)(2)); *Interim Guidance Regarding Detention Authority for Applicants for Admission*, Immigr. Policy Tracking Project (July 8, 2025), https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents (presenting screen captures of July 8, 2025, memorandum from ICE setting forth its interpretation that only noncitizens admitted to the United States and charged with deportability under 8 U.S.C. § 1227 are eligible for a bond hearing, effectively foreclosing release on bond for noncitizens who were not admitted or paroled into the country).

(E.D.N.Y. Jan. 14, 2026) (Gonzalez, J.); *Crespo Tacuri v. Genaro*, No. 25-CV-06896, 2026 WL 35569, at *5, *8 (E.D.N.Y. Jan. 6, 2026) (Merle, J.); *Iza by Iza v. Larocco*, No. 2:25-CV-6915, --- F. Supp. 3d ---, 2026 WL 31378, at *13, *16 (E.D.N.Y. Jan. 5, 2026) (Choudhury, J.); *Galeas Miranda v. Maldonado*, No. 25-CV-6882, 2026 WL 25405, at *2, *2 n.1 (E.D.N.Y. Jan. 5, 2026) (Chen, J.); *Arizmendi v. Noem*, No. 25-CV-7056, 2025 WL 3723960, at *1–2 (E.D.N.Y. Dec. 24, 2025) (Morrison, J.); *Padilla Molina v. DeLeon*, No. 25-CV-06526, 2025 WL 3718728, at *2–5 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Ulloa Montoya v. Bondi*, No. 25-CV-06363, 2025 WL 3718694, at *3–6 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Pesantez Castro v. Maldonado*, No. 25-CV-06844, 2025 WL 3723966, at *1–2 (E.D.N.Y. Dec. 23, 2025) (Azrack, J.); *Y- C- v. Genalo*, No. 25-CV-06558, 2025 WL 3653496, at *3–5, *8 (E.D.N.Y. Dec. 17, 2025) (Merle, J.); *Ye v. Maldonado*, No. 25-CV-06417, 2025 WL 3521298, at *3–6, *9 (E.D.N.Y. Dec. 8, 2025) (Donnelly, J.); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065, --- F. Supp. 3d ---, 2025 WL 3314420, at *21, *33 (E.D.N.Y. Nov. 28, 2025) (Choudhury, J.); *O.F.B. v. Maldonado*, No. 25-CV-6336, --- F. Supp. 3d ---, 2025 WL 3277677, at *3–5, *8 (E.D.N.Y. Nov. 25, 2025) (Gonzales, J.); *Sarmiento Guerrero v. Noem*, No. 25-CV-05881, 2025 WL 3214787, at *3–7 (E.D.N.Y. Nov. 18, 2025) (Komitee, J.); *Hyppolite v. Noem*, No. 25-CV-4304, --- F. Supp. 3d ---, 2025 WL 2829511, at *7–12, *16 (E.D.N.Y. Oct. 6, 2025) (Morrison, J.); *Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434, at *4–9 (E.D.N.Y. Oct. 5, 2025) (Merchant, J.); *J.U. v. Maldonado*, No. 25-CV-04836, --- F. Supp. 3d ---, 2025 WL 2772765, at *4–10 (E.D.N.Y. Sept. 29, 2025) (Merchant, J.); *see also Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–91, 499 (S.D.N.Y. 2025); *Yao v. Almodovar*, No. 25 CIV. 9982, --- F. Supp. 3d ---, 2025 WL 3653433, at *4–10, *12 (S.D.N.Y. Dec. 17, 2025); *Barco Mercado v. Francis*, No. 25-CV-

6582, --- F. Supp. 3d ---, 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").

3. Mr. Sandoval Martinez seeks the same relief here: immediate and unconditional release from detention or, at minimum, a bond hearing at which the government bears the burden of proof to justify his ongoing detention by clear and convincing evidence. Further, he seeks an emergency stay of his transfer from the district and an order to show cause why he should not be released immediately.

4. On February 12, 2026, Mr. Sandoval Martinez was riding in the passenger side of a car with his cousin on their way to work. *See* Ex. A, Austin Thierry Decl. ¶ 7 [hereinafter Thierry Decl.]. At about 7:00 AM, Immigration and Customs Enforcement ("ICE") officers driving in cars abruptly cut them off, forcing his cousin to stop the car. *Id.* The ICE officers tackled Mr. Sandoval Martinez as he attempted to get out of the car and pinned him down. *Id.* Thereafter, the ICE officers searched his pockets and detained him. *Id.* The ICE officers never presented him with a warrant. *Id.*

5. ICE has not conducted any individualized assessment as whether Mr. Sandoval Martinez should be indefinitely detained during his removal proceedings other than to contend that he is subject to mandatory detention under 8 U.S.C. § 1225(b)(2).

6. Mr. Sandoval Martinez cannot seek release before an Immigration Judge ("IJ"). Reversing decades of precedent, the Board of Immigration Appeals (the "BIA" or "Board") held in

September 2025 that IJs lack authority to hear bond requests from noncitizens like Mr. Sandoval Martinez who are present in the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). Accordingly, Mr. Sandoval Martinez brings this petition seeking his immediate and unconditional release or, at minimum, a bond hearing in which the government carries the burden to justify his continued confinement.

7. Mr. Sandoval Martinez also asks this Court to enjoin his transfer outside this district. *Local 1814, Int'l 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.'" (quoting *United States v. Int'l Bhd. of Teamsters*, 907 F.2d 277, 281 (2d Cir. 1990)); *L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 403 (E.D.N.Y. 2025); *Hyppolite*, 2025 WL 2929511, at *5; *see also Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

8. Alternatively, Mr. Sandoval Martinez respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Mr. Sandoval Martinez's detention violates federal law and (2) order his immediate release.

PARTIES

9. Petitioner Melsar Sandoval Martinez is a resident of New York State. *See* Thierry Decl. ¶ 4. ICE arrested him on February 12, 2026. *Id.* ¶ 7. He is currently detained at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.* ¶ 8.

10. Respondent Kristi Noem is named in her official capacity as the Secretary of the United States Department of Homeland Security ("DHS"). In this capacity, she is responsible for

the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Eastern District of New York, and is legally responsible for the pursuit of Petitioner's detention and removal. As such, she is the legal custodian of Petitioner. Respondent Noem's office is located at the United States Department of Homeland Security, Washington, DC 20528.

11. Respondent Judith Almodovar is named in her official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement within the United States Department of Homeland Security. In this capacity, she is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, she is the legal custodian of Petitioner. Respondent Almodovar's office is located at 26 Federal Plaza, New York, NY 10278.

12. Respondent Pamela Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by 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 bond proceedings and the standards used in those proceedings. As such, she is the legal custodian of Petitioner. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

13. Respondent Raul Maldonado Jr. is named in his official capacity as the warden of MDC. In this capacity, he is responsible for the administration of MDC. As such, he is the legal custodian of Petitioner. Respondent Maldonado's office is located at 80 29th Street, Brooklyn, NY 11232.

JURISDICTION AND VENUE

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

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

16. Venue is proper in this district under 28 U.S.C. § 2241 and § 1391. *See Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973). ICE is incarcerating Mr. Sandoval Martinez at MDC, within this district; his immigration proceedings are venued here; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

17. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of their detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). No exhaustion requirement applies to the claims raised in this petition because the IJ and the BIA lack jurisdiction to entertain constitutional challenges. *Khan v. United States A.G.*, 448 F.3d 226, 228 (3d Cir. 2006); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

18. Moreover, the BIA has determined the issue, holding in September 2025 that IJs lack authority to hear bond requests from noncitizens like Mr. Sandoval Martinez who are present

in the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 216. Therefore, Mr. Sandoval Martinez cannot seek relief before the IJ and BIA.

STATEMENT OF FACTS

19. Mr. Sandoval Martinez is a 43-year-old Latino man who resides in New York State. *See* Thierry Decl. ¶ 4. Mr. Sandoval Martinez has resided in the United States since on or about November 4, 2010—approximately 15 years. *Id.*

20. Mr. Sandoval Martinez has no criminal convictions in the United States or anywhere else in the world. *Id.* ¶ 6.

21. Mr. Sandoval Martinez is charged with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), the provision of the INA pertaining to entering the United States without inspection. Ex. B, Form I-862, Notice to Appear.

22. On February 12, 2026, ICE arrested Mr. Sandoval Martinez as he was riding in the passenger side of a car with his cousin on their way to work. *See* Ex. A, Austin Thierry Decl. ¶ 7.

23. That morning, at about 7:00 AM, ICE officers in cars abruptly cut them off, forcing his cousin to stop the car. *Id.* ¶ 7. The ICE officers tackled Mr. Sandoval Martinez as he attempted to get out of the car and pinned him down. *Id.* Thereafter, the ICE officers searched his pockets and detained him. *Id.* The ICE officers never present him with a warrant. *Id.*

24. That morning, ICE transported him to Central Islip, New York ICE Sub Office. *Id.* ¶ 8. On or about February 13, 2026, ICE transferred Mr. Sandoval Martinez to Delaney Hall Detention Facility in Newark, New Jersey. *Id.* On or about February 18, 2026, ICE transferred Mr. Sandoval Martinez to MDC. *Id.* He has been detained for nearly two months without a bond hearing. *Id.*

25. ICE argues that individuals like Mr. Sandoval Martinez are not eligible for an immigration

court bond hearing because they are alleged to have entered the United States without inspection and are therefore subject to unreviewable mandatory detention under 8 U.S.C. § 1225(b)(2)(A). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225; *see also* Thierry Decl. ¶ 11.

26. Accordingly, ICE continues to indefinitely detain Mr. Sandoval Martinez under § 1225.

LEGAL FRAMEWORK

I. Immigration Detention Framework and Bond Hearing Eligibility

27. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

28. For decades, the immigration system has realized this balance through three mutually exclusive detention statutes codified in the INA.

29. First, at the border, "applicants for admission" who are "seeking admission" into the United States are placed into expedited removal proceedings and subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).[2] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

30. Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229(a), during which an IJ—and later potentially the BIA and a United States Court of Appeals—will decide whether the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and

[2] Separately, there is also a limited subset of individuals in and around the border who may be placed into the expedited removal process and are subject to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

adjustment of status. This process can take months or even years. Any detention of individuals arrested inside the United States and placed in removal proceedings—including individuals charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), which applies to noncitizens present in the United States without being admitted or paroled—is subject to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"). Most of these individuals are eligible for release on bond under § 1226(a), and they are consequently entitled to a custody redetermination hearing (colloquially referred to as a "bond hearing") before an IJ to decide whether they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

31. The Supreme Court and the Second Circuit have recognized only one exception to this constitutional requirement for a bond hearing for § 1226 detainees. In 2003, in *Demore v. Kim*, the Court held that 8 U.S.C. § 1226(c) contemplates a narrow category of people who can be subjected to mandatory detention for a brief period, if they have conceded removability and have been convicted of certain crimes after having been afforded the due process required for criminal adjudication. 538 U.S. at 513.

32. Section 1226 was most recently amended in 2025 by the Laken Riley Act ("LRA"). Pub. L. No.119-1, 139 Stat. 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)). Congress passed the LRA to expand mandatory detention under § 1226(c), the statute that subjects noncitizens convicted of certain crimes to detention without initial bond eligibility. *Id.* The LRA amendments require detention for noncitizens who have been: (1) charged as inadmissible under § 1182(a)(6)(A) (the inadmissibility ground for noncitizens "present in the United States without being admitted or paroled"), § 1182(a)(6)(C) (misrepresentation), or

§ 1182(a)(7) (lacking valid documentation); *and* (2) arrested for, charged with, or convicted of certain crimes. *Id.* Therefore, the LRA expressly includes people who entered the country without inspection within the scope of § 1226 detention. *Id.*; *see also Sampiao v. Hyde*, No. 25-11981, 2025 WL 2607924, at *8 (D. Mass. Sept. 9, 2025); *Romero v. Hyde*, No. CV 25-11631, 2025 WL 2403827, at *11 (D. Mass. Aug. 19, 2025).

33. Finally, the INA provides for detention of noncitizens who are subject to final orders of removal. *See* 8 U.S.C. § 1231(a)–(b). A removal order is not final until the BIA has dismissed any appeal of an IJ's decision. 8 C.F.R. § 1241.1(a).

34. This system—in which people arrested inside the United States are generally eligible for a bond hearing and release during immigration proceedings—has existed in essentially this form since Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, Div. C, § 3003, 110 Stat. 3009-546, 3009-585 to 3009-587.

II. Noncitizens' Procedural Due Process Rights

35. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This constitutional protection applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693.

36. 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)).

37. Changes in presidential administrations do not and cannot modify the procedural due process protections afforded by the Constitution. 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." *Mata Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *14 (W.D.N.Y. July 16, 2025).

38. 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*, 424 U.S. 319 (1976), to determine what due process requires. *See Black v. Decker*, 103 F.4th 133, 155–56 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020).

39. 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.*

40. Considering a noncitizen's due process rights and the procedural rights conferred by § 1226(a) and its 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, e.g.*, *Singh*, 2026 WL 233216, at *9–10; *Minarcaja Concha*, 2026 WL 215417, at *17–18; *Lira Caceres*, 2026 WL 233215, at *10–11; *Covelli-Chaparro*, 2026 WL 118842, at *8–9; *Iza by Iza*, 2026 WL 31378, at *13–15; *Ye*, 2025 WL 3521298, at *7–9; *Rodriguez-Acurio*, 2025 WL 3314420, at *28–29; *Gopie v. Lyons*, 2025 WL 3167130, at *2 (E.D.N.Y. Nov. 13, 2025); *Hyppolite*, 2025 WL 2829511, at *13–15; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 2025 WL 2772765, at *9–10; *see also, e.g.*, *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025); *Lopez Benitez*, 795 F.

Supp. 3d at 492–96; *Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020).

41. Under the *Mathews* test, 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*, 795 F. Supp. 3d at 492 ("[Petitioner] invokes 'the most significant liberty interest there is—the interest in being free from imprisonment.'" (quoting *Velasco Lopez*, 978 F.3d at 851)); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (finding that noncitizens in immigration custody had arguably an even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

42. 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 habeas relief . . . ." *Id.*

43. 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 or a flight risk, district courts have held that the government cannot demonstrate a significant interest in their detention. *See, e.g.*, *Singh*, 2026

WL 233216, at *9; *Minarcaja Concha*, 2026 WL 215417, at *18; *Lira Caceres*, 2026 WL 233215, at *10; *Covelli-Chaparro*, 2026 WL 118842, at *8; *Ye*, 2025 WL 3521298, at *8; *Rodriguez-Acurio*, 2025 WL 3314420, at *30; *Hyppolite*, 2025 WL 2829511, at *14; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 2025 WL 2772765, at *10; *see also, e.g.*, *Lopez Benitez*, 795 F. Supp. 3d at 495–96; *Valdez v. Joyce*, No. 25-CV-4627, --- F. Supp. 3d ---, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

44. Recent decisions by federal courts in this and neighboring districts 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. *See Iza by Iza*, 2026 WL 31378, at *2 ("Respondents' detention of Mr. Iza without providing any notice or opportunity to be heard before a DHS officer or immigration judge is a violation of his right to procedural due process."); *Y-C-*, 2025 WL 3653496, at *7 ("The Court therefore concludes, consistent with the view of many other district courts in analogous cases, that the 'ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to be heard violates his due process rights.'" (quoting *Ye*, 2025 WL 3521298, at *8)); *Rodriguez-Acurio*, 2025 WL 3314420, at *2; *O.F.B.*, 2025 WL 3277677, at *8; *Hyppolite*, 2025 WL 2829511, at *7; *see also Lopez Benitez*, 795 F. Supp. 3d at 496 ("Respondents' ongoing detention of [Mr. Lopez Benitez] with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond, violates his due process rights."); *Cuy Comes v. DeLeon*, No. 25-CV-9283, 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025).

45. Further, if a noncitizen does not receive individualized consideration pre-deprivation, their due process rights are irrevocably violated, and no amount of process provided post-

detention can remedy that violation. *See, e.g.*, *Ye*, 2025 WL 3521298, at *9 ("Here, the constitutional violation the petitioner suffered—the government's failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond—renders any post-deprivation review by an immigration judge inadequate."); *Rodriguez-Acurio*, 2025 WL 3314420, at *31 ("In this situation 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."); *Artiga*, 2025 WL 2829434, at *9 ("Given the absence of any deliberative process prior to or contemporaneous with the deprivation of Petitioner's liberty, formerly granted and approved by Respondents, a writ of habeas corpus is the only form of relief and the most appropriate remedy."); *J.U.*, 2025 WL 2772765, at *3 ("ICE's detention of Petitioner did not comport with the implementing regulations and § 1226(a); thus, a bond hearing for post-deprivation review is wholly inadequate to remedy that unlawful detention."); *see also, e.g.*, *Crespo Tacuri*, 2026 WL 35569, at *7 ("Respondents caused petitioner to be detained in violation of his due process rights. No relief short of petitioner's immediate release would be appropriate or sufficient in this case."); *Y-C-*, 2025 WL 3653496, at *7 ("To remedy petitioner's deprivation of due process, the Court holds that petitioner is entitled to immediate release from detention."); *O.F.B.*, 2025 WL 3277677, at *8 ("The government's ongoing detention of the Petitioner, in the face of this complete failure of process, entitles him to immediate release.").

46. As a result, courts in this district have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g.*, *Crespo Tacuri*, 2026 WL

35569, at *7; *Y-C-*, 2025 WL 3653496, at *7; *Ye*, 2025 WL 3521298, at *9; *Rodriguez-Acurio*, 2025 WL 3314420, at *31; *O.F.B.*, 2025 WL 3277677, at *8; *Artiga*, 2025 WL 2829434, at *9; *J.U.*, 2025 WL 2772765, at *3.

III. Timeline Pursuant to 28 U.S.C. § 2243

47. Courts considering petitions for writs of habeas corpus are directed to either issue a writ "forthwith," or to direct the respondent to show cause why the writ should not be granted within three days, or, with good cause, within twenty days. 28 U.S.C. § 2243.

48. Once the government has responded, the statute directs the Court to schedule a hearing on the petition "not more than five days after the return unless for good cause additional time is allowed." *Id.*

49. Because Mr. Sandoval Martinez's liberty remains heavily burdened during his continued detention, he asks the Court to adhere to the schedule set forth in § 2243 and order the Government to show cause within three days as to why the Petition should not be granted.

ARGUMENT

I. Mr. Sandoval Martinez is Not Subject to Mandatory Detention under 8 U.S.C. § 1225(b)(2).

50. ICE has unlawfully classified Mr. Sandoval Martinez as "seeking admission" under 8 U.S.C § 1225(b)(2), directly contravening the plain text of the detention statutory scheme.

51. This misclassification follows a recently-announced DHS policy that rejected the well-established understanding of the INA's detention framework, reversed decades of practice, and implemented the unlawful practice of subjecting noncitizens who entered the United States without inspection to mandatory detention across the country.[3] Pursuant to this policy, ICE's

[3] *See Interim Guidance Regarding Detention Authority for Applications for Admission*, Immigr. Policy Tracking Project (July 8, 2025), https://immpolicytracking.org/policies/ice-issues-memo-eliminating-bond-hearings-for-undocumented-immigrants/#/tab-policy-documents.

representatives in the immigration courts began to request that IJs misclassify individuals eligible for bond under § 1226(a) as mandatorily detained under § 1225(b)(2), and that IJs refuse to conduct bond hearings on that basis.

52. On September 5, 2025, the BIA ratified the DHS policy in a published decision, *Matter of Yajure Hurtado*. 29 I. &. N. Dec. at 216. In that case, the BIA held that all noncitizens who entered the United States without admission or parole—that is, noncitizens charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i)—were "seeking admission" and therefore subject to § 1225(b)(2) and ineligible for bond. *Id.* at 217–20. Because *Matter of Yajure Hurtado* is a precedential decision, it effectively directs all IJs to misclassify people who entered the United States without inspection as mandatorily detained, rendering them ineligible for bond throughout proceedings that can last at least several months and, in many cases, years.

53. Even before ICE introduced, and the BIA adopted, this nationwide policy, IJs in the Tacoma, Washington, immigration court stopped providing bond hearings for people who entered the United States without inspection. In Tacoma, the U.S. District Court for the Western District of Washington granted a motion for summary judgment to a class of noncitizens misclassified in this manner and declared that the "members are detained under 8 U.S.C. § 1226(a) and are not subject to mandatory detention under 8 U.S.C. § 1225(b)(2)." *Rodriguez v. Bostock*, No. 3:25-CV-0524, --- F. Supp. 3d ---, 2025 WL 2782499, at *27 (W.D. Wash. Sept. 30, 2025). Further, the Court held that "the Tacoma Immigration Court's practice of denying bond to Bond Denial Class members on the basis of § 1225(b)(2) violates the Immigration and Nationality Act." *Id.*

54. Since Respondents adopted their new policy, nearly "[e]very district court to address this question has concluded that the government's [new] position belies the statutory text of the

INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez*, 2025 WL 2782499, at *1 (collecting twenty-two recent cases finding against the Government's interpretation); *see also Barco Mercado*, 2025 WL 3295903, at *4, *13 (citing hundreds of cases); *Hyppolite*, 2025 WL 2829511, at *7 (observing that the Government could not point to an Article III court that had adopted its expansive construction of § 1225(b)(2)); *Artiga*, 2025 WL 2829434, at *7 (same).

55. The Government's new policy belies the text of the INA. If, as the Government claims, "§ 1225(b)'s mandatory detention provision applies to all noncitizens who remain applicants for admissions to the United States, this would render superfluous the mandatory detention provisions found in § 1226(c)(1), (D), and (E)." *J.U.*, 2025 WL 2772765, at *8. These provisions "would be unnecessary if all persons who have not been admitted in the United States were already subject to § 1225(b)'s mandatory detention provisions." *Id.* (quoting *Hasan v. Crawford*, 800 F. Supp. 3d 641, 656 (E.D. Va. 2025)).

56. The Government's interpretation would similarly nullify the impact of the recently passed LRA, reducing it to mere surplusage. The LRA "makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes." *J.U.*, 2025 WL 2772765, at *8. Under the LRA, "only when the inadmissibility and the criminal conduct criterion are both satisfied did Congress intend for mandatory detention to be triggered." *Id.* Adopting the Government's interpretation of § 1225(b) would render the LRA's "criminal conduct requirement superfluous, thereby 'nullify[ing] a statute that Congress enacted'" just last year." *Id.* (quoting *Gomes v. Hyde*, No. 1:25-CV-11571, --- F. Supp. 3d ---, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025)).

57. Consequently, if an individual is charged with inadmissibility under 8 U.S.C. § 1182 and the mandatory detention provisions of § 1226(c) do not apply to them, § 1226(a) governs their detention. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 400 (2010) (observing that a statutory exception would be unnecessary if the statute at issue did not otherwise cover the excepted conduct); *see also J.U.*, 2025 WL 2772765, at *8.

58. Any contrary interpretation would ignore the plain text and structure of § 1226 and render meaningless the statute's language specifically addressing individuals who entered the United States without inspection.

59. The Government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply to a noncitizen, an examining immigration officer must make three determinations: that a person is: (1) an applicant for admission; (2) seeking admission; and (3) not clearly and beyond a doubt entitled to be admitted. 8 U.S.C. § 1225(b)(2). Section 1225(a)(1) defines an "applicant for admission" as "[a noncitizen] present in the United States who has not been admitted or who arrives in the United States." *Id.* § 1225(a)(1). Although "seeking admission," in turn, is not defined by statute, "courts have repeatedly held that the term requires 'some active desire or process toward admission' . . . ." *Rodriguez-Acurio*, 2025 WL 3314420, at *22 (quoting *Huamani Tumba v. Francis*, No. 25-CV-8110, 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025)); *see also Martinez v. Hyde*, No. CV 25-11613, 2025 WL 2084238, at *6 (D. Mass. July 24, 2025) (holding that the term "seeking admission" "necessarily implies some sort of present-tense action"). The Government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the term's meaning identical to that of "applicant for admission." Such a reading runs counter to the canon of statutory interpretation against surplusage and contravenes the plain meaning

of text. *See Huamani Tumba*, 2025 WL 3079014, at *4 ("[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." (quoting *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013)); *see also Rodriguez-Acurio*, 2025 WL 3314420, at *23.

60. The legislative history further establishes that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, the provision was enacted in the wake of nearly a century of law in the United States of allowing people inside the country to seek release while the government determined whether to deport them. *See* 34 Stat. 904-05, § 20 (1907) (providing for release on bond for noncitizens alleged to have entered the United States unlawfully); 39 Stat. 874, 890-91, §§ 19, 20 (1917) (similar); 66 Stat. 163, §§ 241(a)(2), 242(a) (1952) (last codified at 8 U.S.C. § 1252(a)(1) (1994)) (providing for release on bond, including for noncitizens alleged to have entered the United States without inspection).

61. Indeed, shortly after IIRIRA's enactment, the legacy Immigration and Naturalization Service and the EOIR issued an interim rule implementing the statute that expressly stated, "[d]espite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

62. Thus, for almost thirty years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and, unless subject to bars inapplicable here, are required to receive a bond hearing upon

request—even if they initially entered the country without authorization. This longstanding, consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject a newly proposed interpretation of the statute at issue).

63. Moreover, the text and structure of § 1226 leave no doubt that the provision applies to people who face charges of inadmissibility, including those who are present without admission or parole, such as Mr. Sandoval Martinez.

64. As the Supreme Court recently held, this Court is not required to defer to the BIA's contrary interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024). While "the judgment of the Executive Branch may help inform" the Court's inquiry, *Id.* at 413, it does so only to the extent of its "power to persuade," *Id.* at 402 (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

65. Mr. Sandoval Martinez, who has resided in this country for 15 years, was detained by ICE in the United States, not while "seeking admission."

66. As a result, he does not fall within the ambit of § 1225(b)(2). His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is contrary to statutory authority and *ultra vires*. Indeed, ICE's own language on Mr. Sandoval Martinez's Notice to Appear designated him as a non-citizen "*present in the United States* who has not been admitted or paroled" as opposed to an "arriving" non-citizen. Ex. B, Form I-862, Notice to Appear (emphasis added).

67. Due to this unlawful misclassification, Mr. Sandoval Martinez remains in detention with no end in sight. Without relief from this Court, he faces the prospect of months, or even years, in immigration custody, separated from his community.

II. Respondents Failed to Provide an Individualized Assessment when Detaining Mr. Sandoval Martinez in Violation of His Procedural Due Process Rights, Such That He Must Be Immediately Released.

68. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V; *see also Reno*, 507 U.S. at 292; *Zadvydas*, 533 U.S. at 678; *Demore*, 538 U.S. at 510.

69. Accordingly, Mr. Sandoval Martinez was entitled to due process of law in advance of any detention.

70. The Second Circuit applies the *Mathews* factors to determine what process is due in the context of immigration detention, balancing: (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*, 978 F.3d at 851 (citing *Mathews*, 424 U.S. at 335).

71. Mr. Sandoval Martinez's private interests here are strong: ICE has deprived him of his liberty. Indeed, detention should be the "carefully limited exception" and implicates the "most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

72. Further, Respondents detained Mr. Sandoval Martinez without notice, an opportunity to respond, or any meaningful evaluation as to his circumstances, including whether he posed a flight risk or a danger to the community.

73. With respect to the Government's interest, Respondents have not articulated any individualized purpose for Mr. Sandoval Martinez's detention. *Zadvydas*, 533 U.S. at 690–91.

74. On the contrary, given ICE's view that Mr. Sandoval Martinez's detention was mandatory, an individualized assessment of the factors in his case was not made prior to his detention. *See Lopez Benitez*, 795 F. Supp. 3d at 495 ("The problem is that Respondents have not offered any explanation for Mr. Lopez Benitez's detention other than their initial assertion that it is mandatory—that is, that it is *non-discretionary*. Such an assertion is precisely the *opposite* of an exercise of discretion, which entails some sort of judgment.") (emphasis in original); *see also Crespo Tacuri*, 2026 WL 35569, at *7 ("[S]ince the Immigration Judge found petitioner was detained under 1225(b)(2)(A), he did not conduct an individualized assessment because under 1225, detention is mandatory.").

75. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Mr. Sandoval Martinez before his summary arrest. Respondents' reliance on § 1225(b)(2)'s mandatory detention provision necessarily demonstrates that they failed to evaluate whether Mr. Sandoval Martinez's circumstances would otherwise warrant detention under § 1226, which provides the sole authority for detaining individuals residing in the United States.

III. In the Alternative, Mr. Sandoval Martinez Must Be Afforded a Bond Hearing at Which the Governments Bears the Burden of Establishing Dangerousness and Flight Risk by Clear and Convincing Evidence.

76. Although immediate release is the only remedy that can adequately address the severe violation of due process rights in this case, *see Crespo Tacuri*, 2026 WL 35569, at *7, should the Court choose not to grant such release, Mr. Sandoval Martinez requests that the Court order that he be provided with an individualized bond hearing at which the Government "bear[s] the burden of demonstrating, by clear and convincing evidence, that [he] is a danger to the community and a risk of flight," *Velasco Lopez*, No. 19-CV-2912, 2019 WL 2655806, at *4 (S.D.N.Y. May 15, 2019).

77. Both the INA and due process require that the burden be allocated in this manner.

A. Congress Did Not Intend for People Subjected to Immigration Detention to Bear the Burden of Proof in Bond Proceedings.

78. Although § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of the provision demonstrates that DHS properly bears the burden of justifying a noncitizen's continued detention. If Congress intended that noncitizens carry the burden of proof in bond hearings pursuant to § 1226(a), it would have expressly said so—as it did in another subsection of § 1226. *See* § 1226(c)(2) ("The Attorney General may release [a noncitizen]" subject to mandatory detention if release is (1) "necessary to provide protection to a witness" and (2) "the [noncitizen] satisfies the Attorney General that the alien will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings").

79. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting

I.N.S. v. Cardoza-Fonseca, 480 U.S. 421, 432 (1987)). This is "particularly true" in instances when Congress enacts statutes "as part of a unified overhaul" of the prior law. *Id.* at 430–31. In 1996, Congress enacted all of § 1226 at the same time. *See Demore*, 538 U.S. at 521 (describing "wholesale reform" of immigration laws as including enactment of § 1226). While § 1226(a) is silent with respect to the burden of proof, § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress's failure to expressly require noncitizens to carry the burden of proof under § 1226(a) when it overhauled the INA indicates that placing the burden on the noncitizen contravenes congressional intent.

80. Further, maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: in replacing 8 U.S.C. § 1252(a)(1) with § 1226(a), Congress made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Matter of Patel*, 15 I. & N. Dec. 666, 666 (B.I.A. 1976) (articulating that an immigrant "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security . . . or that he is a poor bail risk").

81. Former 8 U.S.C. § 1252(a)(1)[4] governed the detention of deportable immigrants prior to § 1226(a). Before the enactment of § 1226 and while § 1252(a)(1) was in effect, the BIA routinely held that noncitizens detained pursuant to § 1252(a) benefited from a presumption

[4] Former 8 U.S.C. § 1252(a)(1) read: "Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole." Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952).

against detention during immigration proceedings. *See Patel*, 15 I. & N. Dec. at 666. The BIA maintained this presumption in several precedential decisions after *Patel*. *See, e.g.*, *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (B.I.A. 1987); *Matter of Spiliopoulos*, 16 I. & N. Dec. 561, 563 (B.I.A. 1978).

82. When Congress preserved the language of former § 1252(a)(1) in re-enacting it as § 1226(a), it presumably adopted the BIA's "administrative . . . interpretation" of the statute and thereby *Patel*'s presumption against detention during removal proceedings. *Lorillard*, 434 U.S. at 580. Notably, both statutes are silent with respect to the burden of proof. *Compare* former § 1252(a)(1) *with* § 1226(a).

83. As such, the agency's requirement that Mr. Sandoval Martinez the burden of proof in a bond redetermination hearing pursuant to § 1226(a) is contrary to the statute.

B. Due Process Requires that Mr. Sandoval Martinez Receive a Bond Hearing Where the Government Bears the Burden by Clear and Convincing Evidence.

84. When the government seeks to use its weighty power to confine a person, due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

85. As repeatedly recognized by courts in this circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention. In *Velasco Lopez*, the Second Circuit applied a *Mathews* analysis to conclude that due process requires placing the burden on the government in a §1226(a) bond redetermination hearing for a petitioner whose detention had become prolonged. *Id.* at 851 (*citing Mathews*, 424 U.S. at 319). Since then, courts in this circuit

have consistently held that due process requires the government to bear the burden of proof. *See*, e.g., *Arana v. Decker*, No. 20-CV-4104, 2020 WL 7342833, at *9 (S.D.N.Y. Dec. 14, 2020) (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months after individualized analysis guided by the framework of *Velasco Lopez*); *Guerrero v. Decker*, 19-CV-11644, 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) ("'[I]n accordance with every court to have decided this issue,' . . . the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a)." (quoting *Linares Martinez v. Decker*, No. 18-CV-6527, 2018 WL 5023946, at *5 (Oct. 17, 2018))).

86. District courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all § 1226(a) custody hearings, regardless of the length of detention. *Reyes v. King*, No. 19 CIV. 8674, 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the "'overwhelming majority of courts' that have found that the Due Process Clause of the Fifth Amendment requires" the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359, 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) ("[N]either the Circuit's decision in *Velasco Lopez* nor any other binding appellate authority overrules the 'overwhelming consensus' of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent 'prolonged detention.'"); *Jimenez v. Decker*, No. 21-CV-880, 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government's argument that *Velasco Lopez* only authorized shifting the

burden with prolonged detention and applying the *Mathews* factors); *Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *3 (S.D.N.Y. Dec. 22, 2021).

87. This consensus approach aligns with the Second Circuit's analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. *Id.* at 856; *see Hernandez-Lara v. Lyons*, 10 F.4th 19, 37–38 (2d Cir. 2021). Those precedents underscore that civil detention must be carefully limited to avoid due process concerns. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also Salerno*, 481 U.S. at 755 ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

88. They further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers to establish the necessity of that detention—not the person detained. *See, e.g.*, *Salerno*, 481 U.S. at 751 (affirming legality of pretrial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81–82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). That interest in liberty is strong even at the outset of detention: "it is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130–31 (2010) (holding that the clear and convincing standard applies under a federal statute which permits a continued confinement of a "mentally ill, sexually dangerous" prisoner beyond a date that the prisoner would otherwise be released, from the

outset of that continued detention period). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received "the *full procedural protections* our criminal justice system offers," *Demore*, 538 U.S. at 513; on Congress considering specific studies regarding its legislative choice, *Id.* at 518–21; and on the relatively short duration of detention it anticipated, *Id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

89. And those precedents finally hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear and convincing standard of proof when an individual's liberty is at stake. *Velasco Lopez*, 978 F.3d at 856 n.15 ("When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof." (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha*, 504 U.S. at 81. In cases in which the individual's interest is of "such weight and gravity," it is improper to ask an individual to "share equally with society the risk of error." *Addington*, 441 U.S. at 427. Immigration detention implicates "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

C. Petitioner's Bond Hearing Must Have Further Procedural Protections to Satisfy Due Process.

90. The Due Process Clause requires that detention "bear a reasonable relation to its purpose." *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety

and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th at 32 n.5 (same). To satisfy this requirement, a bond hearing must include additional procedural protections, specifically consideration of an individual's ability to pay and alternative conditions of release.

91. A robust consensus of district courts in this circuit agree that due process requires consideration of an individual's ability to pay and alternative conditions of release when setting a bond. *See O.F.C. v. Decker*, No. 22 CIV. 2255, 2022 WL 4448728, at *10 (S.D.N.Y. Sept. 12, 2022) ("Courts in this District overwhelmingly agree that IJs must consider these two factors—alternatives to imprisonment and ability to pay—when determining bond for a detained immigrant.) (collecting cases); *Roman v. Decker*, No. 20-CV-6752, 2020 WL 5743522, at *4 (S.D.N.Y. Sept. 25, 2020) ("Requiring that the adjudicator consider alternative conditions of release and the detainee's ability to pay in setting bond [] ensures that detention is not imposed arbitrarily."); *see also Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 317 (S.D.N.Y. 2019) (collecting cases); *Arana*, 2020 WL 7342833, at *8; *Hernandez-Aviles v. Decker*, No. 20 CIV. 7636, 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020); *Fernandez Aguirre v. Barr*, 19-CV-7048, 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019); *Hernandez v. Decker*, No. 18-CV-5026, 2018 WL 3579108, at *12 (S.D.N.Y July 25, 2018).

92. If the noncitizen's ability to pay is not considered after they have been deemed eligible for bond, they will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez v. Sessions*, 872 F.3d 976, 992 (9th Cir. 2017) (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

93. Similarly, if the government can protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno*, 481 U.S. at 755 (approving a pretrial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538 (1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) ("[T]he determination of whether detention was 'necessary to serve a compelling regulatory purpose' necessarily required the decisionmaker to consider whether 'a less restrictive alternative to detention' would suffice."). Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

94. Considering the strong interest that Mr. Sandoval Martinez has in his liberty, the Constitution requires adequate procedural protections—namely the consideration of his ability to pay and alternative conditions of release—prior to depriving him of his freedom.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) and Implementing Regulations

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

96. Respondents are currently detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), its mandatory detention authority.

97. However, Petitioner was, at the time of his arrest and detention by Respondents, not seeking admission to the United States. He was already residing in the United States.

98. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

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

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION
(Procedural Due Process: Failure to Conduct an Individualized Pre-Detention Assessment)

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

101. For the foregoing reasons, Respondents' detention of Petitioner violates the rights guaranteed to him by the Due Process Clause of the Fifth Amendment to the United States Constitution.

102. ICE provided no individualized assessment when they detained him.

103. As multiple courts have held, no amount of post-deprivation process can cure the foregoing violation, and Petitioner should be released.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's detention violates the Immigration and Nationality Act;

b. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

c. Grant a writ of habeas corpus ordering Respondents to immediately and unconditionally release Petitioner from custody, or in the alternative, ordering a bond hearing at which the government bears the burden of establishing by clear and convincing evidence that continued detention is justified and that no alternative to detention will suffice, and at which ability to pay is considered; In the alternative, issue an order to show cause directing the government to respond to this Petition within three (3) days, and hold a hearing within eight (8) days, pursuant to 28 U.S.C. § 2243;

d. Enjoin Petitioner's transfer outside of this district during the pendency of these proceedings;

e. Order a stay of removal to retain the Court's jurisdiction while these proceedings are pending;

f. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

g. Grant such further relief as this Court deems just and proper.

Dated: 03/9/2026
New York, NY

Respectfully submitted,

/s/ Juan Quevedo Gutierrez
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Counsel for Petitioner

Exhibits

A. Declaration of Austin Thierry, Esq.

B. Form I-862, Notice to Appear (August 23, 2025)

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

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 03/9/2026

/s/ Juan Quevedo Gutierrez
Juan Quevedo Gutierrez