**UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF NEW YORK**

ASDRUBAL JOSE ROJAS VERA,

Petitioner,

v.

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

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

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

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

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

Respondents

Civil Action No. _____

**ORAL ARGUMENT REQUESTED**

**EXPEDITED HEARING REQUESTED**

**PETITION FOR A WRIT OF HABEAS CORPUS**

## INTRODUCTION

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

2. Mr. Rojas Vera is a 37-year-old Venezuelan national who has lived in the United States for more than three years. Mr. Rojas Vera entered the United States on September 14, 2022, and was allowed to proceed into the United States, with scheduled check-ins with DHS. He timely filed an affirmative application for asylum with U.S. Citizenship and Immigration Services ("USCIS") on August 5, 2023. *See* Form I-797C, Notice of Action re: Receipt of Form I-589 Application on August 5, 2023, attached hereto as **Exhibit 1**.

3. On November 26, 2025, Mr. Rojas Vera arrived at a scheduled check-in with ICE, as he always has. At that check-in, with Mr. Rojas Vera's asylum application still pending, ICE discretionarily arrested and detained him without articulating any individualized basis or changed circumstances that justified doing so.

4. Mr. Rojas Vera's detention was and is unlawful for two overarching reasons.

5. First, ICE's continued detention of Mr. Rojas Vera without a bond hearing violates the plain language of the Immigration and Nationality Act ("INA"). As a noncitizen physically present in the United States, Mr. Rojas Vera's detention can only be governed by 8 U.S.C. § 1226 (hereinafter "Section 1226"). Critically, Section 1226(a) permits only the discretionary detention of noncitizens present in the country, who must receive an individualized determination of their potential for posing a flight risk or danger to the community. Because Mr. Rojas Vera has not received such a determination, his continued detention is unlawful. Based on this violation of the

INA, Mr. Rojas Vera must be released immediately or afforded a prompt bond hearing and an individualized custody determination by a neutral decisionmaker pursuant to Section 1226(a).

6. ICE maintains that anyone who entered the country without inspection is subject to Section 1225, which requires mandatory detention without the possibility of bond, rather than Section 1226. This view was confirmed by the Board of Immigration Appeals ("BIA") in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). ICE's position has no basis in law or fact, and numerous district courts across the country have rejected the government's position.[1] Indeed, a

[1] *See, e.g.*, *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 489-90 (E.D.N.Y. 2025) (granting habeas petition); *Artiga v. Genalo*, No. 25-cv-5208 (OEM), 2025 WL 2829434, at *4–8 (E.D.N.Y. Oct. 5, 2025) (granting habeas petition); *J.U. v. Maldonado*, No. 25-cv-4836 (OEM), 2025 WL 2772765, at *4–9 (E.D.N.Y. Sept. 29, 2025) (granting habeas petition); *Samb v. Joyce*, No. 25-cv-6373 (DEH), 2025 WL 2398831, at *3 (S.D.N.Y. Aug. 19, 2025) (granting habeas petition); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 483–492 (S.D.N.Y. 2025) (granting habeas petition); *B.D.V.S. v. Forestal*, No. 25-cv-1968, 2025 WL 2855743, at *2 (S.D. Ind. Oct. 8, 2025) (granting habeas petition); *Eliseo A.A. v. Olson*, No. 25-cv-3381, 2025 WL 2886729, at *2–4 (D. Minn. Oct. 8, 2025) (granting habeas petition); *Mena Torres v. Wamsley*, No. 25-cv-5772, 2025 WL 2855379, at *3–4 (W.D. Wash. Oct. 8, 2025) (granting preliminary injunction); *Ledesma Gonzalez v. Bostock*, No. 25-cv-1404, 2025 WL 2841574, at *2–4 (W.D. Wash. Oct. 7, 2025) (granting habeas petition); *Cordero Pelico v. Kaiser*, No. 25-cv-7286, 2025 WL 2822876, at *7–15 (N.D. Cal. Oct. 3, 2025) (granting preliminary injunction); *Echevarria v. Bondi*, No. 25-cv-3252, 2025 WL 2821282, at *4–10 (D. Ariz. Oct. 3, 2025) (granting preliminary injunction); *Elias Escobar v. Hyde*, No. 25-cv-12620, 2025 WL 2823324, at *2–3 (D. Mass. Oct. 3, 2025) (granting habeas petition); *Guerrero Orellana v. Moniz*, No. 25-cv-12664, 2025 WL 2809996, at *4–9 (D. Mass. Oct. 3, 2025) (granting preliminary injunction); *Ayala Casun v. Hyde*, No. 25-cv-427, 2025 WL 2806769, at *2 (D.R.I. Oct. 2, 2025) (granting habeas petition); *Belsai D.S. v. Bondi*, No. 25-cv-3682, 2025 WL 2802947, at *5–7 (D. Minn. Oct. 1, 2025) (granting habeas petition); *Santiago Helbrum v. Williams*, No. 25-cv-349, 2025 WL 2840273, at *4–7 (S.D. Iowa Sept. 30, 2025) (granting habeas petition in part); *Quispe-Ardiles v. Noem*, No. 25-cv-1382, 2025 WL 2783800, at *4–7 (E.D. Va. Sept. 30, 2025) (granting habeas petition); *Alves da Silva v. ICE*, No. 25-cv-284, 2025 WL 2778083, at *3 (D.N.H. Sept. 29, 2025) (granting habeas petition); *Luna Quispe v. Crawford*, No. 25-cv-1471, 2025 WL 2783799, at *4–6 (E.D. Va. Sept. 29, 2025) (granting habeas petition); *Rivera Zumba v. Bondi*, No. 25-cv-14626, 2025 WL 2753496, at *4–9 (D. N.J. Sept. 26, 2025) (granting habeas petition); *Hernandez Lopez v. Hardin*, No. 25-cv-830, 2025 WL 2732717, at *2 (M.D. Fla. Sept. 25, 2025) (granting preliminary injunction); *Brito Barrajas v. Noem*, No. 25-cv-322, 2025 WL 2717650, at *3–5 (S.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Giron Reyes v. Lyons*, No. 25-cv-4048, 2025 WL 2712427, at *4–5 (N.D. Iowa Sept. 23, 2025) (granting preliminary injunction); *Guerrero Lepe v. Andrews*, No. 25-cv-1163, 2025 WL 2716910, at *3–9 (E.D. Cal. Sept. 23, 2025) (granting preliminary injunction); *Sanchez Roman v. Noem*, No. 25-cv-1684, 2025 WL 2710211, at *5–7 (D. Nev. Sept. 23, 2025) (granting preliminary injunction); *Choglo Chafla v. Scott*, No. 25-cv-437, 2025 WL 2688541, at *7 (D. Me. Sept. 22, 2025) (granting preliminary injunction); *Campos Leon v. Forestal*, No. 25-cv-1774, 2025 WL 2694763, at *2–3 (S.D. Ind. Sept. 22, 2025) (granting habeas petition); *Singh v. Lewis*, No. 25-cv-96, 2025 WL 2699219, at *3 (W.D. Ky. Sept. 22, 2025) (granting habeas petition); *Beltran Barrera v. Tindall*, No. 25-cv-541, 2025 WL 2690565, at *2–4

district court has since vacated *Yajure Hurtado* under the Administrative Procedure Act ("APA"). *See Maldonado Bautista v. Santacruz*, No. 5:25-CV-01873-SSS-BFM, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026). Section 1225 applies to noncitizens "seeking admission" to the United States while Section 1226 applies to noncitizens who are "already in the country." Mr. Rojas Vera, who has resided in the United States for more than three years and was arrested while dutifully attending an immigration check-in, plainly falls in the latter category.

7. Second, Mr. Rojas Vera's continued detention violates his Fifth Amendment right to due process. ICE failed to conduct an individualized review in detaining Mr. Rojas Vera, depriving him of any meaningful legal process.

8. Mr. Rojas Vera has suffered irreparable harm because he has been unlawfully deprived of his freedom in contravention of the Fifth Amendment's core protections. Every day that Mr. Rojas Vera remains unlawfully detained, he suffers further irreparable harm.

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(W.D. Ky. Sept. 19, 2025) (granting habeas petition); *Hasan v. Crawford*, 800 F. Supp. 3d 641, 651–57 (E.D. Va. 2025) (granting habeas petition); *Maldonado Vazquez v. Feeley*, No. 2:25-cv-01542, 2025 WL 2676082, at *11–23 (D. Nev. Sept. 17, 2025) (granting preliminary injunction); *Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729, at *4 (D.N.M. Sept. 17, 2025) (granting habeas petition); *Garcia Cortes v. Noem*, No. 25-cv-2677, 2025 WL 2652880, at *2–3 (D. Colo. Sept. 16, 2025) (granting habeas petition in part); *Salcedo Aceros v. Kaiser*, No. 25-cv-6924, 2025 WL 2637503, at *7–12 (N.D. Cal. Sept. 12, 2025) (granting preliminary injunction); *Hernandez Marcelo v. Trump*, No. 25-cv-94, 2025 WL 2741230, at *6–8 (S.D. Iowa Sept. 10, 2025) (granting preliminary injunction in part); *Cuevas Guzman v. Andrews*, No. 25-cv-1015, 2025 WL 2617256, at *3–5 (E.D. Cal. Sept. 9, 2025) (granting preliminary injunction); *Pizarro Reyes v. Raycraft*, No. 25-cv-12546, 2025 WL 2609425, at *4–8 (E.D. Mich. Sept. 9, 2025) (granting habeas petition); *Sampiao v. Hyde*, No. 25-cv-11981, 2025 WL 2607924, at *7–8 (D. Mass. Sept. 9, 2025) (granting habeas petition); *Zaragoza Mosqueda v. Noem*, No. 25-cv-2304, 2025 WL 2591530, at *4–5 (C.D. Cal. Sept. 8, 2025) (granting preliminary injunction); *Doe v. Moniz*, No. 25-cv-12094, 2025 WL 2576819, at *4–6 (D. Mass. Sept. 5, 2025) (granting habeas petition); *Hernandez Nieves v. Kaiser*, No. 25-cv-692, 2025 WL 2533110, at *4 (N.D. Cal. Sept. 3, 2025) (granting preliminary injunction).

## JURISDICTION & VENUE

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

10. Mr. Rojas Vera was detained by Respondents on November 26, 2025. He is currently detained at MDC.

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

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

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

14. Venue is proper in this District pursuant to 28 U.S.C. § 2241(d) (stating that "the application [for habeas corpus] may be filed in the district court for the district wherein such person is in custody"); 28 U.S.C. § 1391(b)(2) (stating that venue is proper in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred"). Venue is proper in this District because Mr. Rojas Vera is presently detained within this District and because a substantial part of the events or omissions giving rise to the claim occurred and are occurring in this District.

15. To the extent Respondents may transfer Mr. Rojas Vera outside this District, such transfer would be undertaken to defeat this Court's jurisdiction. The Court retains authority to

enjoin any such transfer and to order Mr. Rojas Vera's release. *See, e.g.*, *Perez y Perez v. Noem*, No. 25-CV-4828, 2025 WL 1908284, at *2-3 (S.D.N.Y. June 13, 2025) (enjoining a habeas petitioner's transfer pending adjudication of his petition); *Guarchaj v. Genalo*, No. 26-CV-00889, 2026 WL 279831, at *1 (S.D.N.Y. Feb. 2, 2026) (ordering that habeas petitioner not be transferred); *D.W. v. Almodovar*, No. 1:26-00760, 2026 WL 235164, at *1 (S.D.N.Y. Jan. 29, 2026) (same); *J.U.*, 2025 WL 2772765, at *10 (granting habeas petition and ordering release); *Hyppolite*, 808 F. Supp. 3d at 495 (granting habeas petition and citing court's earlier order to release petitioner).

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

**PARTIES**

17. Petitioner Asdrubal Jose Rojas Vera is a 37-year-old Venezuelan national who has lived in the United States for more than 3 years. He was arrested and detained by ICE without a judicial warrant on November 26, 2025. Mr. Rojas Vera is presently detained at MDC in Brooklyn, New York, in this District.

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

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

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

21. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General. In this capacity, Attorney General Bondi is responsible for administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR"), including immigration courts and the Board of Immigration Appeals, pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Mr. Rojas Vera's removal and custody redetermination proceedings and the standards used in those proceedings. Respondent Bondi's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington D.C. 20530.

22. Respondent Raul Maldonado, Jr. is named in his official capacity as Warden of the MDC, a federal incarceration facility located within this District where Mr. Rojas Vera is currently

detained. In his capacity as Warden, Respondent Maldonado oversees the administration and management of MDC, and, as such, is a legal custodian of Mr. Rojas Vera. His business address is 80 29th St, Brooklyn, NY 11232.

## FACTS AND PROCEDURAL BACKGROUND

### I. Mr. Rojas Vera Flees Venezuela

23. Mr. Rojas Vera has been a member of Alianza al Lapiz, a Venezuelan opposition political party, since 2019. *See* Updated Form I-589 dated February 17, 2026, attached hereto as **Exhibit 2**, at 6. In 2019, Mr. Rojas Vera and his Alianza al Lapiz colleagues were attacked and threatened by members of the [redacted]. *Id.* at 5; *see also* María de los Ángeles Graterol and Rory Carroll, *Armed militias deployed in Venezuela as regime attempts to impose authority*, The Guardian (Jan. 6, 2026), https://www.theguardian.com/world/2026/jan/07/caracas-venezuela-paramilitary-groups. Fearing for his life, Mr. Rojas Vera fled Venezuela in 2019 and lived in Colombia for three years before entering the United States in September 2022. Exhibit 2 at 7.

### II. Mr. Rojas Vera's Life in the United States

24. Mr. Rojas Vera has resided in the United States continuously since he entered in September 2022. He is a loving and supportive boyfriend to his partner and acts as the couple's primary breadwinner. *See* Declaration of Alec Jessar, attached hereto as **Exhibit 3**, ¶ 10. Prior to his detention he worked as a barber under a valid work authorization. *See* Employment Authorization Card expiring January 31, 2029, attached hereto as **Exhibit 4**; *see also* Exhibit 2 at 4. While detained, Mr. Rojas Vera has been unable to support his partner, who has been left in a state of constant fear and anxiety after Mr. Rojas Vera's unexpected arrest. Exhibit 3 ¶ 10.

25. Since living in the United States, Mr. Rojas Vera has been an upstanding member of society. He has never been arrested, has no criminal record, and has dutifully attended all immigration check-ins with DHS since entering the country. *See* Form I-213 dated November 26, 2025, attached hereto as **Exhibit 5**, at 3 ("Rojas-Vera has no criminal history or convictions in the United States."). On August 5, 2023, Mr. Rojas Vera timely applied for asylum with USCIS based on the political persecution he faces in Venezuela. *See* Exhibit 5.

## III. ICE Unlawfully Arrests and Detains Mr. Rojas Vera

26. On November 26, 2025, Mr. Rojas Vera was arrested when he attended a scheduled appointment with ICE at 26 Federal Plaza in New York, New York. Exhibit 5 at 2. Mr. Rojas Vera was given no reason for his sudden arrest or detention. Following his arrest, Mr. Rojas Vera was detained at Delaney Hall Detention Facility in Newark, New Jersey. Exhibit 3 ¶ 6. On December 10, 2025, Mr. Rojas Vera was transferred to MDC. *Id.* ¶ 7. Mr. Rojas Vera remains there to this day.

27. DHS placed Mr. Rojas Vera in removal proceedings pursuant to 8 U.S.C. § 1229a and charged Mr. Rojas Vera with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) for allegedly entering the United States without inspection. *See* Exhibit 5 at 2; Additional Charges of Inadmissibility/Deportability dated December 16, 2025, attached hereto as **Exhibit 6**.

28. Mr. Rojas Vera's unlawful detention has caused him significant physical and mental distress. Given his lack of criminal history, Mr. Rojas Vera has never been imprisoned before his current detention.

29. Conditions at MDC are dire. MDC is notorious for its "barbaric," violent, unsanitary, unsafe, and inhumane conditions, in which detainees like Mr. Rojas Vera are held alongside criminal detainees in conditions akin to solitary confinement. *See* Katie Rose Quandt

and Maeve Brennan, *Lockdowns, Violence, and "Barbaric Conditions" in a Federal Jail Known for its Famous Detainees*, The Appeal (June 30, 2025), https://theappeal.org/brooklyn-metropolitan-detention-center-solitary-watch/. MDC guards regularly mistreat the detainees, restrict them to their cells when they are not supposed to, and ignore their requests for medical attention. *See id.*

30. At MDC, Mr. Rojas Vera has only been able to get about 5 hours of sleep per night on a cold, metal bunk, which has given him body cramps and back pain. Exhibit 3 ¶ 12. During a recent bout with the flu, MDC personnel did not give Mr. Rojas Vera anything to alleviate his symptoms. *Id.* He has lost approximately 10 pounds since his arrest. *Id.*

31. The MDC has been cold during Mr. Rojas Vera's detention, and he has only been provided with a single blanket, two jumpsuits, and two flannels. *Id.* ¶ 13. MDC had not provided Mr. Rojas Vera with a jacket. *Id.* Mr. Rojas Vera has been locked in his cell for days at a time during sporadic lockdowns. *Id.* ¶ 14. Mr. Rojas Vera has been unable to shower during these lockdowns and has been confined to an approximately five-by-two meter, two-person cell with a single toilet, which constantly smells because the MDC limits the frequency of flushing. *Id.*

## IV. ICE Reinterprets the INA

32. In support of its argument that all noncitizens who entered without inspection are subject to mandatory detention, ICE has been broadly citing to a newly adopted legal theory first articulated in an internal ICE memorandum dated July 8, 2025, and subsequently endorsed by the BIA in *Yajure Hurtado*. *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws Ass'n (July 8, 2025), https://www.aila.org/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of July 8, 2025 ICE Memo announcing interim guidance).

33. This novel and legally unsupported policy from DHS attempts to subject *all* noncitizens with long-term presence in the interior of the United States to mandatory detention. ICE's new policy and the BIA's subsequent decision in *Yajure Hurtado* represent the government's erroneous attempt to apply § 1225(b)(2)(A) to all noncitizens, rather than a small subset of noncitizens "seeking admission" to the United States. This theory has no basis in law, and in the time since the BIA decided *Yajure Hurtado*, a steadily increasing number of district courts across the country have explicitly rejected its holding. *See supra* n.1. When the BIA continued to adhere to its erroneous decisions despite these repudiations, a district court directly vacated *Yajure Hurtado* under the APA. *See Maldonado Bautista*, 2026 WL 468284, at *10.

## LEGAL FRAMEWORK

### I. Mr. Rojas Vera's Detention is Unlawful

34. Mr. Rojas Vera may succeed on the merits by showing that either his statutory or constitutional rights have been violated. *See, e.g., J.U.*, 2025 WL 2772765, at *10 (ruling that, in a similar case, petitioner's detention was illegal based on both theories); *Savane v. Francis*, 801 F. Supp. 3d 483, 490–95 (S.D.N.Y. 2025) (ruling that, in a similar case, irrespective of the applicable detention provision, petitioner's right to due process had been violated); *Guartazaca Sumba v. Crowley*, No. 25-cv-13034, 2025 WL 3126512, at *5 (N.D. Ill. Nov. 9, 2025) (ruling that, in a similar case, petitioner's statutory rights had been violated and the due process argument need not be considered). Here, both Mr. Rojas Vera's statutory and constitutional rights have been violated.

#### a. Mr. Rojas Vera's detention is unlawful under the INA

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

36. Section 1225(b) requires mandatory detention of certain noncitizens who are "seeking admission" to this country. 8 U.S.C. § 1225(b)(2)(A) ("[I]f the examining immigration

officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien *shall* be detained . . . .") (emphasis added); *Jennings*, 583 U.S. at 289 (stating that 8 U.S.C. § 1225 applies to an alien *seeking admission* into the country") (emphasis added).

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

38. ICE has provided no statutory basis for Mr. Rojas Vera's detention, but his circumstances demonstrate that he can only be detained pursuant to Section 1226. Mr. Rojas Vera lived in the United States for over three years before his arrest. "As noted, § 1226 applies to aliens already present in the United States." *Jennings*, 583 U.S. at 303. Because Mr. Rojas Vera was unquestionably "already present in the United States", Mr. Rojas Vera's detention can be pursuant only to Section 1226. *See Hyppolite*, 808 F. Supp. 3d at 486 (holding that petitioner who was "allowed to enter the country nearly three years ago, and who has followed all laws and procedures that accompanied his continued presence within the United States ever since that time," was detained pursuant to Section 1226(a) not Section 1225(b)(2)).

39. This position is further evidenced by DHS's own records, which suggest that Mr. Rojas Vera was detained pursuant to Section 1226, rather than Section 1225. After Mr. Rojas Vera was arrested on November 26, 2025, he was given a document entitled "Important Information About Section [1226](a) Initial Detention Decisions" from the Enforcement and Removal

Operations New York City field office, implying that his detention is subject to Section 1226. *See* Important Information About Section 236(a) Initial Detention Decisions dated November 26, 2025, attached hereto as **Exhibit 7**. Additionally, that same day, Mr. Rojas Vera was presented with a Notice to Appear. *See* Notice to Appear dated November 26, 2025, attached hereto as **Exhibit 8**. There, DHS designation him as "an alien *present in the United States* who has not been admitted or paroled" as opposed to "an arriving alien." *Id.* at 1 (emphasis added). Therefore, DHS's own classification of Mr. Rojas Vera admits he is a noncitizen who is "already present in the United States" and is subject to discretionary detention under Section 1226.

40. ICE has contested this conclusion, claiming that noncitizens similarly situated to Mr. Rojas Vera are subject to mandatory detention pursuant to Section 1225, reinterpreting the settled understanding of the INA based on a July 8, 2025, internal agency memorandum, which was subsequently endorsed by the BIA in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). *See ICE Memo: Interim Guidance Regarding Detention Authority for Applications for Admission*, Am. Immigr. Laws Ass'n (July 8, 2025), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission (screen captures of ICE Memo announcing interim guidance).

41. ICE's new interpretation of the statutory scheme is contrary to longstanding binding precedent. *See J.U.*, 2025 WL 2772765, at *8 (holding that "Respondent's interpretation of the statutory scheme does not square with more than a century of Supreme Court's holdings interpreting the relationship between §§ 1225(b) and 1226(a)"). As far back as 1958, the Supreme Court held that "our immigration laws have long made a distinction between those aliens who have come to our shores seeking admission . . . and those who are within the United States after an entry, irrespective of its legality." *Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958). "In the latter

instance the Court has recognized additional rights and privileges not extended to those in the former category who are merely 'on the threshold of initial entry.'" *Id.* (citations omitted). "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "[O]nce an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." *Id.*

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

43. *Matter of Yajure Hurtado* is not just inconsistent with prior interpretations of the law, but further represents a radical departure from decades of practice and understanding of Section 1225. Accordingly, it is particularly unpersuasive in light of the immigration courts' consistent prior statements and actions to the contrary. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 225 n.6 ("We acknowledge that for years Immigration Judges have conducted [§ 1226(a)] bond hearings for aliens who entered the United States without inspection."); *Martinez*, 792 F. Supp. 3d at 222 (discussing prior BIA decisions "clearly holding that the detention of a non-citizen arrested within the United States is governed under section 1226, rather than section 1225"); *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1248 (W.D. Wash. 2025) (same). The United States

District Court for the Central District of California accordingly vacated *Yajure Hurtado* under the APA. *See Maldonado Bautista*, 2026 WL 468284, at *10.

44. In the months since Respondents began to broadly invoke Section 1225(b)(2)(A) to justify mandatory detention of noncitizens who already reside within the United States, an ever greater number of district courts have rejected that illogical interpretation of the INA. *See Barco Mercado v. Francis*, No. 25-CV-6582, 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) ("[T]he administration's new position . . . has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States."); *Y- C- v. Genalo*, No. 25-CV-06558, 2025 WL 3653496, at *2 (E.D.N.Y. Dec. 17, 2025) ("Within the Eastern District of New York, at least six judges have considered the issue in the last three months and have unanimously rejected the government's interpretation.") (collecting cases); *see also supra* n.1 (listing cases).

45. Despite these contrary decisions, Respondents have continued to assert that noncitizens like Mr. Rojas Vera remain subject to mandatory detention and are ineligible for bond. *See, e.g.*, *Archil Maisuradze v. Haynes*, No. 26-CV-1578 (LAK), 2026 WL 563437, at *1 (S.D.N.Y. Feb. 28, 2026) (respondents continued to assert that petitioner was subject to mandatory detention under Section 1225(b)(2)(A) and that "ordering a bond hearing still appears to be futile" because contrary decisions had "not stopped the BIA from directing immigration judges to continue adhering to *Yajure Hurtado*"); *Campos Jovel v. Bondi*, No. 26-CV-01193 (NRM), 2026 WL 603573, at *1 (E.D.N.Y. Mar. 4, 2026) (respondents continuing to assert application of Section 1225(b)(2)(A)); *Figueroa Ocampo v. Noem*, No. 26-CV-0999 (PKC), 2026 WL 587643, at *1

(E.D.N.Y. Mar. 3, 2026) (same); *Parada Cruz v. Noem*, No. 2:26-CV-1112 (NJC), 2026 WL 555038, at *1 (E.D.N.Y. Feb. 27, 2026) (same).

46. Even setting aside the numerous decisions rejecting their argument, "Respondents' position violates the canon of statutory interpretation that 'every clause and word of a statute should have meaning.'" *Hyppolite*, 808 F. Supp. 3d at 486. Section 1225(b)(2)(A) states that, "in the case of an alien who is an *applicant for admission*, if the examining immigration officer determines that an alien *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added). "If the mandatory detention provision in § 1225(b)(2) applied to all noncitizens who are 'applicants for admission,' then there would be no need for Congress to have separately referenced a sub-category of persons 'seeking admission' in the specific section that relates to mandatory detention." *Hyppolite*, 808 F. Supp. 3d at 486. Adopting Respondents' position would thus require the Court to "elide[] or avoid[] section 1225(b)(2)(A)'s 'seeking admission' language . . . , treating it as mere surplusage of the 'applicant' requirement." *Id.* (citation omitted) (collecting cases holding same).

47. Interpreting the statute's words "in their context and with a view to their place in the overall statutory scheme," as courts are required to do, further undermines Respondents' position. *See King v. Burwell*, 576 U.S. 473, 486 (2015) (citation omitted); *see also Graham Cnty. Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 559 U.S. 280, 290 (2010) (stating that the court's duty is to "construe statutes, not isolated provisions") (citation omitted). "In considering § 1225(b)(2)(A) within its statutory context, it was clearly intended to apply to noncitizens who are presently seeking to enter the United States, and not those . . . who have lived in the country for almost three years." *Hyppolite*, 808 F. Supp. 3d at 487. Section 1225(b)(2)(A) is subject to

subparagraphs (B) and (C), which set out specific detention exceptions and rules for "crewm[e]n", "stowaway[s]", and aliens "arriving" on land. This statutory construction makes it clear that "seeking admission" in Section 1225 "is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering"—not those like Mr. Rojas Vera who have been present for years. *Hyppolite*, 808 F. Supp. 3d at 487.

48. Furthermore, it is a basic canon of statutory interpretation that a statute should be construed as to give effect to all its provisions and that no part will be superfluous. *Corley v. United States*, 556 U.S. 303, 314 (2009). If an interpretation of one provision "would render another provision superfluous[,]" courts presume that interpretation is incorrect. *Bilski v. Kappos*, 561 U.S. 593, 607–08 (2010). This presumption is "strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013). Under ICE's newfound theory, nearly all noncitizens in the United States not previously admitted or who entered without inspection are suddenly subject to mandatory detention pursuant to Section 1225(b). But if that were correct, then it would render superfluous numerous provisions of the same statutory scheme, including Sections 1226(c)(1)(A), (D), and (E).

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

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

51. Section 1226(c)(1)(E)—added by amendment just last year via the enactment of the Laken Riley Act—makes certain noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions in 8 U.S.C. § 1182, and (2) they are charged with, arrested for, convicted of, or admit to having committed certain crimes. 8 U.S.C. § 1226(c)(1)(E). "When Congress acts to amend a statute, we presume it intends its amendment to have real and substantial effect." *Stone v. I.N.S.*, 514 U.S. 386, 397 (1995), *abrogation recognized on other grounds, Riley v. Bondi*, 606 U.S. 259 (2025). Yet, "if § 1225(b)(2) already mandated detention of any alien who has not been admitted, regardless of how long they have been here, then adding [the provisions of the Laken Riley Act] to the statutory scheme was pointless." *Hyppolite*, 808 F. Supp. 3d at 488 (quoting *Lopez-Campos v. Raycraft*, No. 25-cv-12486, 2025 WL 2496379, at *8 (E.D. Mich. Aug. 29, 2025)). ICE's theory that Section 1225(b) applies to practically every noncitizen who entered without inspection and was then arrested while residing in the United States, regardless of whether they committed any crime, would make Section 1226(c)(1)(E)'s criminal conduct requirement entirely superfluous. *Id.*; *Gomes v. Hyde*, No. 25-cv-11571, 2025 WL 1869299, at *7 (D. Mass. July 7, 2025).

52. To summarize, Mr. Rojas Vera, who has lived in the United States for over three years and was not "seeking admission" at the time of his arrest, is plainly being detained pursuant

to Section 1226(a), which entitles him to a bond hearing. Respondents' argument that noncitizens similarly situated to Mr. Rojas Vera are being detained pursuant to Section 1225(b)(2)(A) is inconsistent with the plain language of the statute, settled case law, and EOIR's own prior interpretations of the law. Respondents' continued detention of Mr. Rojas Vera violates the INA and is therefore unlawful.

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

**b. Mr. Rojas Vera's detention violates the Due Process Clause of the Fifth Amendment**

**i. Mr. Rojas Vera's detention violates his procedural due process rights**

54. Mr. Rojas Vera is detained in violation of his procedural due process rights under the Fifth Amendment.

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

56. In determining whether an individual's procedural due process rights have been violated, courts weigh three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

57. Here, the *Mathews* test strongly supports Mr. Rojas Vera's claim to a procedural due process violation. *See, e.g.*, *Hyppolite*, 808 F. Supp. 3d at 490-94 (finding procedural due process violation in nearly identical circumstances where the petitioner was detained without a pre-deprivation bond hearing); *J.U.*, 2025 WL 2772765, at *9–10 (same); *Lopez Benitez*, 795 F. Supp. 3d at 491–496 (same); *Artiga*, 2025 WL 2829434, at *8–9 (same); *Savane*, 801 F. Supp. 3d at 490–95 (same); *Samb*, 2025 WL 2398831, at *3 (same).

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

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

60. However, in this case, Mr. Rojas Vera "was detained without any pre-detention, individualized determination as to whether he posed a flight risk or any risk of dangerousness," nor is there any indication "that there was any material change in circumstances that triggered [Mr.

Rojas Vera's] sudden arrest and detention" on November 26, 2025. *Hyppolite*, 808 F. Supp. 3d at 491. Yet ICE detained him without an individualized bond hearing under Section 1226(a), in clear violation of both the INA and due process.

61. Under the second *Mathews* factor, the risk of erroneous deprivation is obvious because Mr. Rojas Vera is illegally subjected to mandatory detention under Section 1225(b)(2). The law requires "an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention [] to prevent an erroneous deprivation of liberty." *Lopez Benitez*, 795 F. Supp. 3d at 495. Furthermore, courts in this jurisdiction have routinely held that if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g.*, *Rodriguez-Acurio v. Almodovar*, No. 25-CV-6065, 2025 WL 3314420, at *30 (E.D.N.Y. Nov. 28, 2025) ("Respondents' detention of [petitioner] with no notice or opportunity to be heard and no showing of changed circumstances violates her due process rights."); *J.U.*, 2025 WL 2772765, at *10 ("Respondent's ongoing detention of Petitioner with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights."); *Hyppolite*, 808 F. Supp. 3d at 494 (ordering petitioner's immediate release and that he not be re-detained "without providing him notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, at which the government will bear the burden of showing that his detention is authorized").

62. Mr. Rojas Vera's personal circumstances further demonstrate the "extremely high" risk inherent to an erroneous deprivation here: he has no criminal convictions, has resided in the United States for over three years, and is the primary breadwinner in his relationship. Ex. 3 ¶ 10; Ex. 5 at 3. Mr. Rojas Vera is therefore not a danger to his community or a flight risk. *See Hyppolite*,

808 F. Supp. 3d at 493 (finding "extremely high" risk of erroneous deprivation based on similar considerations).

63. As to the third *Mathews* factor, the foregoing considerations heavily outweigh any DHS interest in subjecting Mr. Rojas Vera to continued detention, or the burden of any substitute procedures. "The government's interest in detaining people on a discretionary, case-by-case basis under Section 1226(a) includes 'ensuring the appearance of aliens at future immigration proceedings' and 'preventing danger to the community.'" *Hyppolite*, 808 F. Supp. 3d at 493 (quoting *Valdez v. Joyce*, No. 25-cv-4627, 2025 WL 1707737, at *4 (S.D.N.Y. June 18, 2025)). These interests are not a concern with regards to Mr. Rojas Vera. He has lived in the United States for over three years and has zero criminal convictions, not to mention the fact that he has was dutifully attending an immigration hearing immediately preceding his arrest. Additionally, those interests are likewise served by separate mandatory detention procedures applicable to certain categories of noncitizens, such as those who have committed certain crimes. *See* 8 U.S.C. § 1226(c).

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

**ii. Mr. Rojas Vera's detention violates his substantive due process rights**

65. In addition to its procedural protections, the Due Process Clause of the Fifth Amendment "includes a substantive component that mandates the application of strict scrutiny whenever the government infringes on fundamental liberty interests, regardless of what process the government provides." *Hasan*, 800 F. Supp. 3d at 658 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms

of physical restraint—lies at the heart of the liberty that Clause protects." *Zadvydas*, 533 U.S. at 690.

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

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

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

## II. Mr. Rojas Vera is Entitled to Immediate Release

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

70. Courts considering the detention of noncitizens under similar circumstances have concluded that "a bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation" given that such "detention was unlawful from its inception because ICE detained her under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a)." *Rodriguez-Acurio*, 2025 WL

3314420, at *31. Accordingly, "'disposing of the matter as law and justice require necessitates [petitioner's] release from detention and relief guarding against her re-detention in violation of this Court's determinations that she is not subject to mandatory detention under Section 1225(b)." *Id.* at *32 (quoting 28 U.S.C. § 2243); *see also O.F.B. v. Maldonado*, No. 25-CV-6336, 2025 WL 3277677, at *8 (E.D.N.Y. Nov. 25, 2025) ("The government's ongoing detention of the petitioner, in the face of this complete failure of process, entitles him to immediate release."); *Ye v. Maldonado*, No. 25-CV-6417, 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025) (same).

71. Mr. Rojas Vera is therefore entitled to immediate release from Respondents' unlawful detention.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

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

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

*Benitez*, 795 F. Supp. 3d at 496–98 (excusing administrative exhaustion and granting habeas relief where petitioner demonstrated factors (1) and (4)).

74. Courts have excused the exhaustion requirement in cases like Mr. Rojas Vera's where the four prongs of the *Beharry* test are easily satisfied—(1) Mr. Rojas Vera has no genuine opportunity for adequate relief based on ongoing ICE and EOIR practices; (2) he is already suffering irreparable injury by his unlawful detention; (3) administrative appeal would be futile; and (4) Mr. Rojas Vera has raised a substantial constitutional question as to whether his due process rights have been violated. *See, e.g.*, *Archil Maisuradze*, 2026 WL 563437, at *1 (ordering bond hearing "still appears to be futile" because immigration judges still failing to provide such hearings after numerous decisions rejecting Respondents' arguments); *Artiga*, 2025 WL 2829434, at *3–4; *J.U.*, 2025 WL 2772765, at *3; *Lopez Benitez*, 795 F. Supp. 3d at 497–98; *Alvarez Puga v. Assistant Field Off. Dir.*, No. 25-cv-24535-CIV, 2025 WL 2938369, at *2 (S.D. Fla. Oct. 15, 2025).

## CLAIMS FOR RELIEF

### COUNT ONE

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

1. Mr. Rojas Vera realleges and incorporates by reference each and every allegation contained above.

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

3. When Mr. Rojas Vera was arrested on November 26, 2025, he was an "alien[] already in the country," and accordingly "may only be subject to detention as a matter of discretion under § 1226(a)." *See J.U.*, 2025 WL 2772765, at *9. Respondents' application of Section 1225(b)(2) to Mr. Rojas Vera unlawfully mandates his continued detention and violates the INA.

**COUNT TWO**

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

4. Mr. Rojas Vera realleges and incorporates by reference each and every allegation contained above.

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

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

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

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

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

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

11. Respondents' failure to provide Mr. Rojas Vera with such a bond hearing has caused and continues to cause him substantial and concrete harm.

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

**COUNT THREE**

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

13. Mr. Rojas Vera realleges and incorporates by reference each and every allegation contained above.

14. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

15. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

16. Here, the *Mathews* test strongly supports that Respondents' detention of Mr. Rojas Vera violates his procedural due process rights.

**COUNT FOUR**

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

17. Mr. Rojas Vera realleges and incorporates by reference each and every allegation contained above.

18. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

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

20. Respondents' detention or Mr. Rojas Vera is arbitrary and unjustified, in violation of his substantive due process rights.

**PRAYER FOR RELIEF**

WHEREFORE, Petitioner Mr. Rojas Vera respectfully requests that this Court:

21. Exercise jurisdiction over this matter;

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

23. Release Mr. Rojas Vera from custody of the Respondents pending disposition of this petition.

24. Declare that Mr. Rojas Vera's detention violates the APA, the INA, and the Due Process Clause of the Fifth Amendment;

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

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

27. Award Mr. Rojas Vera costs and reasonable attorneys' fees; and

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

Date: March 12, 2026

New York, New York

Respectfully submitted,

**AKIN GUMP STRAUSS HAUER & FELD LLP**

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