UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

J.R.,

Petitioner,

v.

Kenneth GENALO, Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Raul MALDONADO JR., Warden of Metropolitan Detention Center; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General; Daren K. MARGOLIN, Director, Executive Office for Immigration Review,

Respondents.

Case No. 26-cv-1512

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner, J.R.,[1] is a 40-year-old Venezuelan national who fled his home country to escape political persecution. Decl. of Miriam Mars ("Mars Decl.") ¶¶ 2, 8-9. Since receiving humanitarian parole into the United States on December 15, 2022, J.R. lived peacefully in the United States with his partner, their child, and his two stepchildren until his abrupt detention by U.S. Immigration and Customs Enforcement ("ICE") on August 21, 2025. J.R. is currently detained by Respondents in ICE custody at the Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.* ¶¶ 1-2. J.R.'s physical confinement is unlawful because he was re-detained without individualized consideration, without changed circumstances, and without a notice and opportunity to respond, in violation of statute, regulation, and due process. J.R.'s

[1] Accompanying this petition is a motion by Petitioner to proceed by initials and to redact certain personally identifying information, including his alien registration number, complete date of birth, and photograph, as well as the last name of his partner, in accompanying documents.

detention is also unlawful under ICE's erroneous position that noncitizens present in the United States at the time of arrest are subject to mandatory detention. Lastly, J.R.'s ongoing detention violates due process, whether it is under the discretionary or mandatory detention provisions of the Immigration and Nationality Act ("INA") and federal regulations, because it has continued for over six months without any individualized review.

2. J.R. was forced to leave Venezuela because he publicly denounced government corruption and faced repeated threats against his life. Mars Decl. ¶¶ 5-9. Facing the prospect of prolonged torture and death, J.R. embarked on a harrowing journey to safety. *Id.* ¶ 9.

3. After obtaining an appointment through the Customs and Border Protection's ("CBP") CBP One application, J.R. entered the United States on December 15, 2022 at the Brownsville, Texas port of entry, was granted humanitarian parole, and was released. Mars Decl. ¶ 2. He was paroled until December 14, 2023. *Id.* ¶ 10; Ex. A (I-94). J.R. subsequently moved to New York, and continued to pursue relief in immigration removal proceedings. Mars Decl. ¶ 3. In 2023, J.R. applied for Temporary Protected Status ("TPS") and for asylum, withholding of removal, and protection under the Convention against Torture ("CAT"). *Id.* In 2024, he was granted TPS, which was valid until April 2, 2025. *Id.* After J.R.'s TPS expired, he reapplied for TPS in June 2025, but has yet to receive a decision on his pending application. *Id.* ¶ 17; Ex. G (TPS Renewal Fee Waiver).

4. J.R. complied with the conditions of his release for the entirety of his time in the United States, including appearing for his follow-up appointment with ICE on August 21, 2025, where ICE unexpectedly arrested him. Mars Decl. ¶ 18. J.R. also received a valid work authorization. Ex. E (Employment Authorization Document).

5. J.R. lived peacefully and worked first as a day laborer in construction and then as a food deliverer, to provide for his partner, their child, and his partner's two children from a prior relationship to whom J.R. acts as a stepfather. Mars Decl. ¶¶ 4, 33.

6. However, without any notice or change in circumstances, ICE abruptly and unexpectedly arrested J.R. on August 21, 2025, when J.R. reported to an ICE appointment. Mars Decl. ¶ 18. J.R. has since been confined at MDC in Brooklyn, New York. *Id.* ¶ 1; Ex. C (I-830).

7. Respondents' abrupt detention of J.R. without any individualized consideration and without notice, showing of changed circumstances, or opportunity to respond at a hearing before a neutral decisionmaker, violates statute, regulation, and due process. District courts across the country have recognized that noncitizens facing civil detention have a constitutionally protected interest in their continued liberty and in due process prior to detention. *See, e.g.*, *O.F.B. v. Maldonado*, __ F. Supp. 3d __, 2025 WL 3277677, at *6 (E.D.N.Y. Nov. 25, 2025) (immigration courthouse arrest without notice violated due process); *Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (same); *Millan v. Voorhies*, 2026 WL 248376, at *13 (N.D. Ohio Jan. 30, 2026); *Martinez v. LaRose*, 2025 WL 3677938, at *3 (S.D. Cal. Dec. 18, 2025); *Rojas v. Almodovar*, 2025 WL 3034183, at *9 (S.D.N.Y. October 30, 2025) (revocation of parole without notice and individualized reason violated due process; *Kelly v. Almodovar*, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process).

8. J.R.'s detention also violates the plain language of the INA. Although the statute provides for mandatory detention in some circumstances—in connection with expedited removal proceedings, 8 U.S.C. § 1225(b)(1)(B)(ii), for "applicant[s] for admission" who are "seeking admission" when inspected by an immigration officer, 8 U.S.C. § 1225(b)(2)(A), and for those

convicted of certain crimes, 8 U.S.C. § 1226(c)—none of those circumstances applies here.[2] As the government had until recently understood from the current statutory scheme's inception, individuals like J.R. who are already present in the United States are subject to detention only under § 1226(a), which permits release on bond or conditional parole. *See, e.g.*, *Gonzalez Guardado v. Maldonado*, No. 1:26-CV-1170-OEM, at 4 (E.D.N.Y. Mar. 10, 2026) (collecting cases where judges in this District found that § 1226 applies in scenarios where a petitioner is detained after entering the country); *Lopez Benitez v. Francis*, 2025 WL 2267803 (S.D.N.Y. August 8, 2025) ("[T]he Court need not reach the outer limits of the scope of the phrase 'seeking admission' in § 1225(b)—it is sufficient here to conclude that it does not reach someone who has been residing in this country for more than two years, and that as someone 'already in the country,' [Petitioner] may be subject to detention only as a matter of discretion under § 1226(a)." (internal citation omitted)).

9. Respondents' new interpretation that § 1225(b)(2)(A) applies to noncitizens like J.R., who are already present in the country at the time of detention, has been rightly rejected by the vast majority of courts that have considered the issue. *See, e.g.*, *J.U. v. Maldonado*, 805 F. Supp. 3d 482 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); *Rodriguez v. Bostock*, No. 3:25-cv-05240-TMC (W.D. Wash. Sept. 30, 2025), ECF No. 65 (granting summary judgment that members of a noncitizen class were detained under § 1226(a) and not subject to mandatory detention under § 1225(b)(2), and that the practice of denying bond to class members on the basis of § 1225(b)(2) violated the INA); *Rodriguez v. Bostock*, 2025 WL 1193850, at *14 (W.D. Wash. Apr. 24, 2025) (granting preliminary injunction); *Lopez Benitez*,

[2] Unless otherwise indicated, all subsequent statutory references are to Title 8 of the U.S. Code.

2025 WL 2371588, at *8 ("[T]he Court rejects the notion that § 1225(b) applies to all such individuals . . . ."); *Gomes v. Hyde*, 2025 WL 1869299 (D. Mass. July 7, 2025); *Martinez v. Hyde*, 792 F. Supp. 3d 211 (D. Mass. 2025); *Rosado v. Figueroa*, 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Maldonado v. Olson*, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Arrazola-Gonzalez v. Noem*, 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025); *Romero v. Hyde*, 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Samb v. Joyce*, 2025 WL 2398831 (S.D.N.Y. Aug. 19, 2025); *Ramirez Clavijo v. Kaiser*, 2025 WL 2419263 (N.D. Cal. Aug. 21, 2025); *Leal-Hernandez v. Noem*, 2025 WL 2430025 (D. Md. Aug. 24, 2025); *Kostak v. Trump*, 2025 WL 2472136 (W.D. La. Aug. 27, 2025); *Jose J.O.E. v. Bondi*, 2025 WL 2466670 (D. Minn. Aug. 27, 2025) *Lopez-Campos v. Raycraft*, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Vasquez Garcia v. Noem*, 2025 WL 2549431 (S.D. Cal. Sept. 3, 2025); *Zaragoza Mosqueda v. Noem*, 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025); *Pizarro Reyes v. Raycraft*, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Sampiao v. Hyde*, 2025 WL 2607924 (D. Mass. Sept. 9, 2025); *see also, e.g.*, *Palma Perez v. Berg*, 2025 WL 2531566, at *2 (D. Neb. Sept. 3, 2025) (noting that "[t]he Court tends to agree" that § 1226(a) and not § 1225(b)(2) authorizes detention); *Jacinto v. Trump*, 2025 WL 2402271, at *3 (D. Neb. Aug. 19, 2025) (same); *Anicasio v. Kramer*, 2025 WL 2374224, at *2 (D. Neb. Aug. 14, 2025) (same); *Guerrero Orellana v. Moniz*, 2025 WL 2809996, at *9 (D. Mass. Oct. 3, 2025) (granting a habeas petitioner a preliminary injunction because he was likely to succeed on the merits of his claim for entitlement to a bond hearing rather than mandatory detention); *J.G.O. v. Francis*, 2025 WL 3040142, at *2 (S.D.N.Y. Oct. 28, 2025) (noting that the cases in favor of petitioner "are so numerous that only a handful are cited here as illustrative examples"); *Cardenas v. Almodovar*, 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025) ("Indeed, by the Court's count, there are scores

of decisions—in this Circuit and beyond—on the Section 1226(a) side of the split."); *Vasquez-Rosario v. Noem*, 2026 WL 196505, at *9 (E.D. Pa. Jan. 26, 2026) ("Applying the plain meaning of 'arriving' as used within Section 1225(b)(1)(A)(i), Vasquez-Rosario can no longer be considered an alien 'who is arriving in the United States,' even though he may have initially been classified as an 'arriving alien' in November 2022."); *Ye v. Maldonado*, 2025 WL 3521298, at *8 (E.D.N.Y. Dec. 8, 2025); *Varela Padron v. Oddo*, No. 3:26-cv-301 (W.D. Pa. Mar. 11, 2026), ECF No. 13 (rejecting distinction between individuals who entered without inspection and those who initially presented at a port of entry, as such a distinction "would, essentially, elevate aliens who make no effort to see[k] legal admission, but are held to be covered under the discretionary provisions of § 1226, over those who attempt to enter legally and are paroled in the United States, who Respondents argue should be subject to mandatory detention under § 1225"). J.R. likewise seeks an order that § 1226(a) is the proper statutory basis for his detention, not § 1225(b).

10. Lastly, J.R. has spent more than six months locked up by ICE at various detention facilities without due process and with no end in sight. Mars Decl. ¶ 18. His immediate release must be ordered, or, in the alternative, if a bond hearing is ordered, the government must carry the burden with clear and convincing evidence to justify detention based on a risk of danger or flight that cannot be mitigated by bond or any alternatives to detention, and the adjudicator must meaningfully consider J.R.'s ability to pay when setting a bond amount and any alternatives to detention. *See Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020).

11. Accordingly, J.R. seeks a writ of habeas corpus ordering that he be released from detention immediately based on his detention without due process and without a lawful basis. In the alternative, J.R. seeks an individualized bond hearing within fourteen days where the government bears the burden of proof by clear and convincing evidence to justify continued

detention under § 1226(a) and where the adjudicator evaluates J.R.'s ability to pay and any alternatives to detention.

JURISDICTION

12. J.R. is in the physical custody of Respondents. J.R. is detained by ICE at MDC in Brooklyn, New York.

13. This Court has jurisdiction under 28 U.S.C. § 2241(a) (habeas corpus), 28 U.S.C. § 1331 (federal question), and the Suspension Clause, *see* U.S. Const. art. I, § 9, cl. 2.

14. This Court may grant relief under 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

15. Under *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of New York, the judicial district in which J.R. is currently detained. *See* Ex. C.

16. Venue is also proper under 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

17. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith," unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

18. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963). "The application for the writ usurps the

attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (attribution omitted).

PARTIES

19. Petitioner J.R. is a citizen of Venezuela who has been detained by ICE since August 21, 2025. Mars Decl. ¶¶ 2, 18. He is currently held at the MDC in Brooklyn, New York. *Id.* ¶ 1. He has lived in the United States since December 2022 and, before his detention, was residing in New York City with his partner, his child, and his stepchildren. *Id.* ¶¶ 2-3.

20. Respondent Kenneth Genalo is the Director of the New York Field Office of ICE's Enforcement and Removal Operations Division. As such, he is Petitioner's immediate custodian and is responsible for Petitioner's detention and removal. He is sued in his official capacity.

21. Respondent Raul Maldonado Jr. is employed by the Bureau of Prisons as Warden of the MDC, where Petitioner is detained. He has immediate physical custody of Petitioner. He is sued in his official capacity.

22. Respondent Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's detention. The Secretary has ultimate custodial authority over Petitioner and is sued in her official capacity.

23. Respondent Pamela Bondi is the Attorney General of the United States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. She is sued in her official capacity.

24. Respondent Daren K. Margolin is the Director of EOIR. He is responsible for ensuring the implementation and adherence to the INA in removal proceedings, including for custody redeterminations in bond hearings. He is sued in his official capacity.

FACTS

25. J.R. was born in 1985 in Venezuela. Mars Decl. ¶ 4. He has a child with his partner and also acts as a stepfather to his partner's two children from a prior relationship. *Id.* He is detained in the Metropolitan Detention Center ("MDC") in Brooklyn, New York. *Id.* ¶ 1.

26. J.R. came to the United States to seek safety from political persecution in Venezuela. Mars Decl. ¶¶ 6, 8-9. J.R. openly opposed the government, supported an opposition political party, and attended protests where he was hit with tear gas and sometimes beaten. *Id.* ¶¶ 6, 8. Members of the Venezuelan government's [redacted] have directly threatened to kill J.R., including by holding him at gunpoint at his home. *Id.* ¶ 8. Facing the prospect of prolonged torture and death, J.R. embarked on a harrowing journey to safety. *Id.* ¶ 9.

27. J.R. applied to enter the United States from Venezuela through DHS's CBP One application. Mars Decl. ¶ 10. Through CBP One, DHS provided J.R. with an appointment to come to the United States on December 15, 2022 at the Brownsville, Texas port of entry. *Id.* Accordingly, on December 15, 2022, J.R. reported to his CBP One appointment at Brownsville, Texas. *Id.*

28. At his CBP One appointment, DHS gave J.R. a Notice to Appear before an immigration judge in New Jersey on January 15, 2026. Ex. B (Notice to Appear) at 1. He was designated as an arriving noncitizen and placed in removal proceedings under §1229a. *Id.*[3]

[3] This petition uses the term "noncitizen" as equivalent to the statutory term "alien." *See, e.g., Santos-Zacaria v. Garland*, 598 U.S. 411, 414 n.1 (2023).

29. On or around July 19, 2023, J.R. filed an asylum application, which he amended on October 19, 2025. Mars Decl. ¶¶ 12-22. In a July 20, 2023 notice acknowledging receipt of the application, DHS told J.R. that he "may remain in the U.S. until [his] asylum application is decided," that he needed advance permission if he "wish[ed] to leave while [his] application is pending," and that he must provide written notification within 10 days if he "change[s] [his] address." Ex. D (I-589 Receipt Notice). As allowed based on his asylum application, J.R. then applied for an Employment Authorization Document, which he obtained. *See* Ex. E.

30. Further, the United States Citizenship and Immigration Services granted J.R. Temporary Protected Status ("TPS") under § 1254a, valid from May 10, 2024 until April 2, 2025. Ex. F (TPS Approval Notice) at 1. TPS provides "protection from removal (or deportation), employment authorization in the United States, and the opportunity to apply for travel authorization." *Id.* When his TPS expired, J.R. reapplied for TPS in June 2025; he is waiting for a decision on his pending application. Mars Decl. ¶ 17.

31. Since settling in New York City in December 2022, J.R. has lived peacefully. J.R. and his family lived in a shelter, and he sought employment to support them. Mars Decl. ¶ 11. He first worked as a day laborer in construction but sustained a severe work-related injury from falling headfirst down a flight of stairs. *Id.* ¶ 13. The injury required that J.R. undergo two spinal fusion surgeries and continues to cause him excruciating pain. *Id.* ¶¶ 13, 30. Following the accident, J.R. worked as a food deliverer. *Id.* ¶ 33.

32. J.R. suffers from a myriad of physical and neurological issues. After his 2023 construction accident, J.R. has undergone at least four surgeries and has severe memory issues consistent with Neurocognitive Disorder Due to Traumatic Brain Injury, according to a licensed clinical psychologist, Edward Fernandez, Psy.D. Exs. A ¶¶ 14, 23; I.

33. On November 6, 2025, Dr. Fernandez conducted a psychological evaluation of J.R. and found that he suffers from a "Neurocognitive Disorder Due to Traumatic Brain Injury." Ex. I (Psychological Report) at 11, 19. His assessment revealed that J.R. showed a "pattern of deficits across multiple cognitive domains that directly correspond to his reported fall down concrete stairs in July 2023, which resulted in severe head trauma." *Id.* at 19. These deficits include significant "attention and working memory deficits," "difficulties with both encoding new information and retrieving previously learned material," and significant impairment in "language function . . . particularly in the areas of word retrieval and verbal fluency." *Id.* at 19-21. Dr. Fernandez stated that, based on "the comprehensive neuropsychological assessment findings," his clinical opinion was that J.R.'s "profound cognitive impairments significantly compromise his capacity to participate meaningfully in legal proceedings." *Id.* at 21. Notwithstanding his medical challenges, J.R. continued to work and support his family until the day of his arrest.

34. Based on Dr. Fernandez' assessment and a January 30, 2026 competency hearing, an immigration judge ordered safeguards for J.R.'s immigration proceedings. Mars Decl. ¶ 25.

35. On August 21, 2025, J.R. reported to ICE after receiving a notice of appointment. Mars Decl. ¶ 18. When J.R. appeared for the appointment, ICE arrested him without explanation. *Id.* J.R.'s son had accompanied him to the appointment and was present when ICE took J.R. into custody. *Id.* ¶ 34. His son recalls begging ICE officers to let him see his father before they took him away. *Id.* ICE refused. *Id.* J.R. has since been detained at MDC in Brooklyn, New York. *Id.* ¶ 1.

36. The current incarceration by ICE is dangerous, demoralizing, and taking a great toll on J.R.'s health. J.R.'s detention prevented him from undergoing further surgery, and MDC has failed to provide proper medical treatment. Mars Decl. ¶ 31. MDC's own x-rays from September 2, 2025 show that J.R. has fusion hardware in his spine, spinal disc degeneration, and spinal

arthritis, which cause J.R. excruciating physical pain. *Id.* ¶¶ 30-31. Despite this, MDC has refused J.R. access to his prescribed medication or other painkillers, instead telling him to just buy low-grade medicine on his own at the commissary. Ex. J (MDC Medical Requests) at 1-8. However, neither J.R. nor his family have the funds to regularly purchase this medication, and the commissary is only restocked approximately twice per month. Mars Decl. ¶ 31.

37. In detention, J.R.'s neurological issues have further deteriorated. J.R. has increasing trouble remembering any dates and his memories of past events vary by the day. Mars Decl. ¶ 32. J.R. can no longer remember which family members he has called, simple requests from his cellmates, the date of hearings, and even discussions from meetings just days ago. *Id.* He now resorts to writing everything down because he requires a written reminder. *Id.*; *see also* Ex. I at 20 (Dr. Fernandez opined that J.R.'s "cognitive impairments may be compounded by additional factors, including his current detention circumstances" as "the incarcerated environment presents unique challenges" such as "lack of cognitive stimulation" and "chronic stress" which "negatively impact cognitive functioning and memory consolidation").

38. Outside of MDC, J.R.'s family is suffering due to J.R.'s detention. Mars Decl. ¶ 33. J.R.'s family continues to live in a shelter. *Id.* His partner is struggling to single-handedly financially and emotionally support their three children, despite working around 60 hours a week. *Id.*

39. J.R. has never been convicted of a crime. He was arrested twice: once for petit larceny that the district attorney declined to prosecute, and once for a license plate issue for which the charge was dismissed. Mars Decl. ¶¶ 15-16.

40. J.R. is actively pursuing asylum, withholding of removal, and CAT protection in removal proceedings based on his fear of persecution and torture in Venezuela. Mars Decl. ¶¶ 12,

22. He has an individual hearing on the merits of his application before an immigration judge scheduled for March 16, 2026. *Id.* ¶ 26. Even if the immigration judge grants J.R. relief, DHS may file an appeal with the Board of Immigration Appeals and decide to continue to detain him while DHS pursues its appeal. *Id.* ¶ 28. If, on the other hand, the immigration judge orders J.R. removed, he may file an appeal with the BIA. *Id.* In either case, an appeal of J.R.'s case to the BIA may take between four to six months. *Id.*

41. J.R. is neither a flight risk nor a danger to the community. Even an ICE official has acknowledged J.R.'s good character while detained at MDC. His deportation officer wrote a letter attesting to J.R.'s "leadership," "good behavior, respect for facility rules," and "positive attitude toward both staff and fellow detainees." Ex. H (Deportation Officer's Recommendation Letter). The deportation officer highlighted that J.R. "regularly assist[s] . . . those . . . struggling with the stress and challenges of detention." *Id.* At MDC, J.R. has actively created "a more peaceful and cooperative environment within the housing unit" and is "viewed as someone others c[an] rely on for assistance and support." *Id.*

42. ICE unlawfully arrested and re-detained J.R. without any individualized consideration, a showing of changed circumstances, or notice and an opportunity to respond.

43. To the extent Respondents are subjecting J.R. to detention under § 1225(b)(2) based on their current interpretation of that provision, J.R. is unable to seek bond or release on other conditions before an immigration judge.

44. As a result, J.R. has been held in physical confinement without individualized review for more than six months. Without relief from this Court, he faces many more months, and potentially years, in immigration custody, separated from his family and community.

LEGAL FRAMEWORK

I. Respondents' Detention of J.R. Without Notice and an Individualized Hearing Prior to Deprivation Violates Due Process.

A. J.R. has a liberty interest in release from physical restraint.

45. The Fifth Amendment's Due Process Clause prevents Respondents from depriving "any person" of "life, liberty, or property, without due process of law." U.S. Const. amend. V.

46. "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 v. Davis*, 533 U.S. 678, 690 (2001). The government cannot infringe upon a person's liberty without "adequate procedural protections." *Id.* at 690–91.

47. Civil immigration confinement, whether in the first instance or as a result of revocation of release, infringes on a protected liberty interest. The "essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it." *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976) (cleaned up). "The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review." *Velasco Lopez*, 978 F.3d at 850 (citing *Boumediene v. Bush*, 553 U.S. 723, 781–83, 786 (2008)). The Court has repeatedly held that the Due Process Clause protects the fundamental liberty interest in freedom from physical restraint and confinement. *See, e.g.*, *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality opinion) (describing "the most elemental of liberty interests—the interest in being free from physical detention"); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992) (reaffirming that "freedom from bodily restraint" is at the core of due process liberty and cannot be arbitrarily curtailed); *Youngberg v. Romeo*, 457 U.S. 307, 316 (1982) (recognizing that the Due Process Clause protects a liberty interest in "freedom from bodily restraint"); *United States v. Salerno*, 481

U.S. 739, 750 (1987) (acknowledging the individual's "strong interest in liberty" and the "fundamental nature" of that right even in the pretrial context); *O'Connor v. Donaldson*, 422 U.S. 563, 575–76 (1975) (holding that a state cannot constitutionally confine a nondangerous person capable of surviving safely in freedom); *Addington v. Texas*, 441 U.S. 418, 425 (1979) (reiterating that civil commitment is a "significant deprivation of liberty" requiring due process protection). Considering this settled law, confinement is constitutionally permissible only when the government can point to a valid legal basis and provide process commensurate with the severity of the deprivation. Without that lawful justification and meaningful procedural protection, confinement violates due process and can be remedied by the writ of habeas corpus.

48. The liberty interest against detention is well-established in the context of parole, probation, and release from civil immigration confinement. *See Valdez v. Joyce*, 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (concluding that an immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the noncitizen petitioner had a "liberty interest in remaining out of [immigration] custody").

49. A long line of Supreme Court precedent recognizes that individuals conditionally released from detention have a liberty interest in remaining free. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding that liberty interest of an individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process under *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the

same pre-deprivation process as *Morrissey* provides). As the D.C. Circuit put it, "[t]he Supreme Court has repeatedly held that at least in some circumstances, a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated." *Hurd v. District of Columbia*, 864 F.3d 671, 683 (D.C. Cir. 2017).

50. In *Morrissey*, the Supreme Court held that to comport with due process, a hearing is necessary to determine whether "the individual has in fact breached the conditions of parole" to protect not only the individual's protected liberty interests, but also the interest of society "in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole." 408 U.S. at 483–84. This rationale applies equally to detention by ICE. *Demore v. Kim*, 538 U.S. 510, 523 (2003) ("It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." (attribution omitted)).

51. Noncitizens, "of course, are entitled to due process." *Zheng v. Mukasey*, 552 F.3d 277, 286 (2d Cir. 2009) (attribution omitted); *accord* U.S. Const. amend. V ("any person"). "[T]he Fifth Amendment entitles noncitizens to due process of law," no matter "whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez*, 978 F.3d at 850 (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Demore*, 538 U.S. at 523; and *Zadvydas*, 533 U.S. at 693). Noncitizens therefore maintain a protected liberty interest in remaining free from confinement. *Id.* at 851.

52. District courts across the country have recognized that noncitizens facing civil detention share this constitutionally protected interest in their continued liberty. *See, e.g.*, *Kelly*, 2025 WL 2381591, at *3 (ICE check-in detention without notice violated due process); *Lopez Benitez*, 2025 WL 2371588, at *9 (immigration courthouse arrest without notice violated due

process); *Chipantiza-Sisalema*, 2025 WL 1927931, at *4 (same); *Valdez*, 2025 WL 1707737, *2 (same); *Ramirez Lopez v. Trump*, No. 25-cv-04826 (JAV) (S.D.N.Y. July 10, 2025), ECF No. 31 (granting temporary restraining order and release because the re-detention without notice of a person on an order of supervision likely violated due process); *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *13 (W.D.N.Y. May 2, 2025) ("[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process."); *see also Rosado v. Figueroa*, 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025) ("A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them—has particular relevance here, where Rosado's detention was previously found to be unnecessary to serve any purpose."), *report and recommendation adopted*, 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Castellon v. Kaiser*, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Prieto Salazar v. Kaiser*, 2025 WL 2456232 (E.D. Cal. Aug. 26, 2025); *Meza v. Bonnar*, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that the petitioner raised "serious questions going to the merits" that she had a "vested interest" in her continued release from immigration detention).

53. Indeed, as one district court recognized, a petitioner subject to a civil detention scheme has an "arguably greater" liberty interest "than the interest of parolees in *Morrissey*," who had not yet completed their lawfully imposed criminal sentences. *See Ortega*, 415 F. Supp. 3d at 969–70 (applying *Morrissey* and *Gagnon* to conclude that the noncitizen petitioner had a "liberty interest in remaining out of [immigration] custody"). And as another district court acknowledged, due process "requirements take on particular significance when [the Court] consider[s] what actually happened to [the petitioner]. He was not 'detained'; he was, in fact, incarcerated under conditions" that are substantially worse than "those imposed on criminal defendants sent to prison

following convictions for violent felonies and other serious crimes. But in sharp contrast to them, the 'sum total of procedural protections afforded' to [the petitioner] was far less." *Kelly*, 2025 WL 2381591, at *3 (quoting *Velasco Lopez*, 978 F.3d at 850–51, in turn quoting *Boumediene*, 553 U.S. at 783).

54. The record confirms J.R.'s protected liberty interest. J.R. has lived in the United States for over three years, after entering lawfully through humanitarian parole at a port of entry in December 2022. Mars Decl. ¶¶ 2-3. He settled in New York with his partner and their children, found employment, and shared in the financial responsibilities of supporting his family. *Id.* ¶¶ 11, 33. He applied for asylum and was granted TPS. *Id.* ¶ 12. He complied with all government requirements, including appearing for an ICE appointment on August 21, 2025, where he was unexpectedly detained. *Id.* ¶ 18. J.R. has now been locked up at MDC for more than six months, despite suffering from serious medical conditions, including spinal injuries requiring multiple surgeries, chronic debilitating pain, and a traumatic brain injury that has resulted in a diagnosed neurocognitive disorder. *Id.* ¶¶ 13-14, 23, 30. The government has largely refused to treat J.R.'s medical needs during his detention. *Id.* ¶ 31.

55. In short, J.R. is precisely the type of person whose liberty interest demands the procedural protections the Due Process Clause guarantees. *See, e.g.*, *Hernandez Lazo v. Noem*, 2026 WL 303430, at *13 (E.D.N.Y. Feb. 4, 2026) (explaining that an individual who has lived in this country for years and developed deep community ties here, such as the home of his family and employment, has greater procedural due process rights than someone detained within twenty-five yards of the border).

56. Courts in this District have resoundingly recognized that individuals in J.R.'s position have a due process liberty interest in remaining free from civil detention, regardless of

whether they could have been detained with minimal process when they first crossed the border. *See Munoz Caraguay v. Larocco*, 2026 WL 294842, at *2 (E.D.N.Y. Feb. 4, 2026) ("As such, even when the Government has the initial discretion to detain or release someone from custody, once the Government decides to release them, that individual has a constitutionally protected liberty interest in remaining free from detention without due process."); *Ye*, 2025 WL 3521298, at *8 ("Even if the mandatory detention provision in Section 1225 applied—and the weight of authority says that it does not—the government violated the petitioner's due process rights because it gave him no process before agents arrested him and detained him."); *Hernandez Lazo*, 2026 WL 303430, at *13 (recognizing that "those at the threshold of entry stand on a different footing for due process purposes than noncitizens who have established connections in this country" (cleaned up)); *Ambroladze v. Maldonado*, 2026 WL 280182, at *3 (E.D.N.Y. Feb. 3, 2026) ("[E]ven if the Court ignored the problems with [the government's statutory interpretation], or the hundreds of district court decisions that have confronted this issue, and instead followed the minority view (which is effectively what the government asks here), the result would be the same—Petitioner's arrest and detention do not comport with due process." (alteration incorporated) (quoting *O.F.B.*, 2025 WL 3277677, at *6)).

57. Courts in this District have likewise recognized that a petitioner retains a protected liberty interest in freedom from unlawful detention even when their humanitarian parole has expired. *See Rodriguez-Acurio v. Almodovar*, __ F. Supp. 3d __, 2025 WL 3314420, at *27 (E.D.N.Y. Nov. 28, 2025) (recognizing that a noncitizen whose humanitarian parole had expired nonetheless "has a liberty interest in being free from detention" and is entitled to due process protections); *Mohd v. Noem*, 2026 WL 363525, at *3 (E.D.N.Y. Feb. 9, 2026) (granting habeas relief; holding that § 1225(b)(1) cannot be used to detain someone "paroled into the United States,"

"regardless of whether that parole has since expired"; and reiterating the petitioner's liberty interest in freedom from detention); *Paza Iza v. Larocco*, 2026 WL 31378, at *2 (E.D.N.Y. Jan. 5, 2026) (holding that re-detention after parole had expired implicated a "significant liberty interest in being free from imprisonment" and thus required constitutionally adequate process).

58. Accordingly, J.R. has a protectable liberty interest in remaining free from detention.

B. J.R. is entitled to pre-deprivation notice and an opportunity to be heard.

59. Although civil immigration detention is authorized by statute, the detention may only serve two legitimate purposes: mitigating flight risk or preventing danger to the community. *Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 854.

60. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *See Velasco Lopez*, 978 F.3d at 851 (*citing Mathews*, 424 U.S. 319); *see also J.U.*, 2025 WL 2772765, at *10 (applying *Mathews* factors); *Artiga*, 2025 WL 2829434, at *8 (same). This test requires sufficient process to mitigate the risk of erroneous deprivation of a liberty interest. *See Velasco Lopez*, 978 F.3d at 851 (*citing Mathews*, 424 U.S. 319).

61. As set forth in *Mathews*, a court must consider three factors to determine what procedural protections the Constitution requires: (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." 424 U.S. at 335; *see also Mata Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *17 (applying the *Mathews* test to find that parole revocation without notice likely violated due process).

62. As to the first factor, the "importance and fundamental nature" of an individual's liberty interest is well-established. *See Salerno*, 481 U.S. at 750; *see also Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 475 (3d Cir. 2015) ("[T]he burden to [a noncitizen's] liberty outweighs a mere presumption that the [noncitizen] will flee and/or is dangerous."), *overruled on other grounds by Jennings v. Rodriguez*, 583 U.S. 281 (2018). Weighing this factor in *Velasco Lopez*, the Second Circuit found the private interest to be, "on any calculus, substantial." 978 F.3d at 851–52. This is because "[f]reedom from imprisonment . . . lies at the heart of the liberty" the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690; *see also Foucha*, 504 U.S. at 80.

63. Second, there is also a high risk of an "erroneous deprivation" of liberty through the current procedures and a significant value to providing notice and a hearing before any re-detention. ICE arrested and detained J.R. without any evidence of individualized review, without setting forth the basis for detention, and without first providing any hearing or any other form of process. *See, e.g.*, *Artiga*, 2025 WL 2829434, at *9 ("With respect to the second prong of the *Mathews* test, the record demonstrates that no individualized determination was made prior to or contemporaneously with the decision to detain Petitioner in September 2025, and there was no change in circumstances between the time DHS released Petitioner on bond to his re-arrest and detention."). It did not even let him keep a copy of the purported administrative warrant.

64. Third, the proposed procedures—notice and an opportunity to be heard at a pre-detention bond hearing before a neutral decisionmaker, where the government bears the burden to prove that J.R.'s detention is authorized—would not meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Indeed, the government's interest supports notice and a hearing before detention because

the government has an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 855; *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) ("[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention.").

65. Additionally, "unnecessary detention imposes substantial societal costs. The needless detention of those individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents." *Hernandez-Lara*, 10 F.4th at 33 (cleaned up). In this case, Respondents would not have been prejudiced by providing J.R., who had been complying with ICE requirements for years and is seeking relief in full removal proceedings, with notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the government bears the burden of showing that J.R.'s detention is justified.

66. Due process requires that, at a minimum, "an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing." *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022); *see also J.U.*, 2025 WL 2772765, at *10 (applying the *Mathews* test and concluding that the "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").

67. Because Respondents failed to provide the process the *Mathews* test requires, they violated J.R.'s right to due process.

68. The appropriate remedy is immediate release, with an order that J.R. shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents have the burden of showing that J.R.'s detention is justified. *See Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (ordering the immediate release of a petitioner detained by ICE because her sudden re-detention violated her right to due process); *Valdez*, 2025 WL 1707737, at *4 (ordering the release of a petitioner re-detained after an immigration court hearing and concluding that "Respondents' 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"); *Artiga*, 2025 WL 2829434, at *9 (granting the habeas petition, ordering the petitioner's transfer back to the jurisdiction, and ordering his release from custody); *Rodriguez-Acurio*, 2025 WL 3314420, at *27; *Mohd*, 2026 WL 363525, at *3; *Paza Iza*, 2026 WL 31378, at *2.

II. Respondents' Detention of Petitioner Without Individualized Review or the Opportunity for a Bond Hearing Violates the INA.

A. Statutory framework for detaining noncitizens

69. The INA establishes the statutory framework governing noncitizens' entry into and removal from the United States.

70. Congress authorized immigration detention in two separate statutory provisions governing distinct circumstances. On the one hand, § 1225, consistent with its focus on inspections of noncitizens arriving in the United States, authorizes the detention of "certain [noncitizens] seeking admission into the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). On the

other hand, § 1226 authorizes the detention of "certain [noncitizens] already in the country pending the outcome of removal proceedings." *Id.*[4]

71. Congress enacted this detention scheme as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104-208, div. C, §§ 302–03, 110 Stat. 3009–546, 3009–582 to –583, 3009–585. But the basic distinction between noncitizens seeking entry at the border and those already present here has a long pedigree. *See, e.g.*, *Barco Mercado v. Francis*, __ F. Supp. 3d __, 2025 WL 3295903, at *7-9 (S.D.N.Y. Nov. 26, 2025) (recounting the statutory history). Although IIRIRA collapsed the distinct processes for exclusion of those seeking entry (the predecessor to § 1225) and deportation of those already here (the predecessor to § 1226) into a single removal process, it maintained the distinction for detention purposes. *See id.*

72. Section 1226, titled "Apprehension and Detention of Aliens," provides the general process for arresting and detaining noncitizens who are present in the United States and whom the government seeks to remove. § 1226; *see Jennings*, 583 U.S. at 288; *J.U.*, 2025 WL 2772765, at *5. It authorizes the Attorney General to "issue a warrant for the arrest and detention of [a noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 288 (quoting § 1226(a)). Except as provided in § 1226(c), "the Attorney General 'may release' [a noncitizen] detained under § 1226(a) 'on bond' or 'conditional parole.'" *Id.* (alteration incorporated) (quoting § 1226(a)(2)).[5]

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[4] Still another provision addresses the detention of noncitizens who have been ordered removed until the removal order is carried out. 8 U.S.C. § 1231(a).

[5] Section 1226(a) provides in full:

> On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States.

73. Section 1226(c) prohibits release under § 1226(a) for noncitizens "who fall[] into one of several enumerated categories involving criminal offenses and terrorist activities." *Jennings*, 583 U.S. at 289. Some of those categories describe noncitizens who are "inadmissible" for specified reasons, § 1226(c)(1)(A), (D), (E), while others describe noncitizens who are "deportable" for specified reasons, § 1226(c)(1)(B)-(C). Just last year, Congress amended § 1226(c) to expand mandatory detention to certain inadmissible noncitizens who are accused or convicted of (or admit to) specified crimes. Laken Riley Act, Pub. L. No. 119-1, § 2, 139 Stat. 3, 3 (2025) (codified at 8 U.S.C. § 1226(c)(1)(E)).

74. "When a person is apprehended under § 1226(a), an ICE officer makes the initial custody determination." *Lopez Benitez*, 2025 WL 2371588, at *3. Detainees who object to the initial determination "may request a bond hearing before an [immigration judge] at any time before a removal order becomes final." *Id.*; *see* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1). Immigration judges' "bond and custody determinations" are appealable to the Board of Immigration Appeals. 8 C.F.R. §§ 236.1(d)(3), 1236.1(d)(3); *see Hernandez v. Sessions*, 872 F.3d 976, 983 (9th Cir. 2017); *J.M.P. v. Arteta*, 2025 WL 2984913, at *10 (S.D.N.Y. Oct. 23, 2025).

Except as provided in subsection (c) and pending such decision, the Attorney General—

(1) may continue to detain the arrested alien; and

(2) may release the alien on—

(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or

(B) conditional parole; but

(3) may not provide the alien with work authorization (including an "employment authorized" endorsement or other appropriate work permit), unless the alien is lawfully admitted for permanent residence or otherwise would (without regard to removal proceedings) be provided such authorization.

75. Section 1225, by contrast, is titled "Inspection of Aliens; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing," and sets out the process for inspecting "applicants for admission" and other noncitizens who are arriving in the United States. An "applicant for admission" is defined as a noncitizen "present in the United States who has not been admitted or who arrives in the United States." § 1225(a)(1). Section 1225(b)(1) creates an expedited removal process for applicants who an immigration officer determines are "arriving in the United States" and are inadmissible on specified grounds, including under § 1182(a)(7) for lack of a valid entry document. § 1225(b)(1)(A)(i); *see also* § 1225(b)(1)(A)(iii)(I)-(II) (authorizing the expansion of expedited removal to certain additional individuals).

76. Section 1225 mandates detention for two categories of applicants. First, applicants who, as part of the expedited removal process, are referred for a credible fear interview to consider a claim for asylum must be detained for the resulting proceedings. "If the [asylum] officer determines at the time of the interview that" the applicant has a credible fear, the applicant "shall be detained for further consideration of the application for asylum." § 1225(b)(1)(B)(ii). If the officer instead finds that the applicant does not have a credible fear, the applicant "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." § 1225(b)(1)(B)(iii)(IV).[6]

77. Second, § 1225(b)(2)(A) requires detention pending removal proceedings for certain applicants seeking admission when inspected by an immigration officer. It provides in pertinent part: "[I]n 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

[6] Although § 1225 does not address whether any other individuals in expedited removal proceedings may or must be detained, a DHS regulation purports to mandate detention "pending determination [of inadmissibility] and removal." 8 C.F.R. § 235.3(b)(2)(iii).

entitled to be admitted, the alien shall be detained for a proceeding under [§ 1229a]." § 1225(b)(2)(A). Among other exceptions, § 1225(b)(2)(A) "shall not apply to" a noncitizen "to whom paragraph (1) applies"—that is, to a noncitizen eligible for expedited removal. § 1225(b)(2)(B).

78. Finally, Congress gave the Secretary of Homeland Security discretion (subject to exceptions not relevant here) to temporarily "parole into the United States . . . any alien applying for admission," provided the Secretary does so "only on a case-by-case basis for urgent humanitarian reasons or significant public benefit." § 1182(d)(5)(A). That discretion includes the ability to release noncitizens from otherwise mandatory detention. *See, e.g.*, *Jennings*, 583 U.S. at 288. Parole is not "an admission of the" noncitizen. § 1182(d)(5)(A).

79. Where parole is granted for a specified time, it "automatically terminate[s]" when that time expires. 8 C.F.R. § 212.5(e)(2)(i). Otherwise, parole may be terminated only "upon written notice" and a determination by certain specified DHS officials that "neither humanitarian reasons nor public benefit warrants the continued presence of the [noncitizen] in the United States." *Id.*; *see* § 1182(d)(5)(A) (providing for termination "when the purposes of such parole shall, in the opinion of the Secretary of Homeland Security, have been served"). After a noncitizen's parole is terminated, "his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States." § 1182(d)(5)(A); *see also* 8 C.F.R. § 212.5(e)(2)(i) (providing that the noncitizen "shall be restored to the status that he or she had at the time of parole").

B. Section 1226(a) is the only available basis for detention in J.R.'s circumstances.

80. Contrary to Respondents' new interpretation of the INA provisions and regulations governing detention, Respondents' statutory authority to detain an applicant for admission already present in the United States is limited. The majority of courts to have considered the issue have

correctly recognized that § 1226(a) provides the sole source of statutory authority to detain such an individual.

1. Section 1226(a) applies here because J.R. was already residing in the United States and had established connections here while awaiting resolution of his removal proceedings at the time of his detention.

81. At the time of his detention, J.R. was residing in the United States, pursuing asylum, withholding of removal, and CAT protection in removal proceedings under § 1229(a), and awaiting "a decision on whether [he] is to be removed from the United States." § 1226(a). He thus fits squarely within § 1226(a)'s scope. *See id.*; *Jennings*, 583 U.S. at 288.

82. J.R.'s established connections in the United States and the federal government's own treatment of him from the time it allowed him to enter until it suddenly locked him up underscore the point. At every turn, J.R. has done what the government asked and has affirmatively pursued available avenues for lawful status—and the government allowed him to enter the country, stay here, and work here while it decides his application for relief. J.R. scheduled an appointment with the government through CBP One and accordingly presented himself at the Brownsville, Texas port of entry in December 2022. Mars Decl. ¶ 10; Ex. B. DHS allowed him to enter—and to live here free of physical confinement—by granting him humanitarian parole and releasing him into the interior. *Id.* He applied for asylum in July 2023 and amended his application in October 2025. Mars Decl. ¶¶ 12, 22. That application remains pending. Meanwhile, the government granted J.R.'s application for TPS under § 1254a from May 2024 through April 2025; he has since reapplied. Mars Decl. ¶¶ 12, 17; Ex. F; Ex. G. Based on J.R.'s pending asylum application, the government gave him an Employment Authorization Document, allowing him to work here. Ex. E. He continues to pursue asylum, with his next hearing before an immigration judge scheduled for March 16, 2026. Mars Decl. ¶ 26. And he regularly attended his ICE appointments, right up to the

August 21, 2025 one at which the government suddenly arrested him without giving any reason, let alone notice and an opportunity to be heard. *Id.* ¶¶ 18, 34.

83. Whatever the government might have been able to do when J.R. first arrived at the border with an appointment, that ship has sailed—with the government at the helm. The government gave J.R. permission to enter the United States and work here; referred him to § 1229a removal proceedings to decide his asylum claim; and allowed him to remain here after his parole expired, including for a time with TPS's express protection from removal. It cannot now pretend that none of that happened just because it feels like charting a new course. The only detention authority available to it now is the authority Congress provided under § 1226(a). So, if the government insists on detaining J.R., it must comply with § 1226(a).[7]

2. No other provision authorizing immigration detention applies here.

84. Start where the statute does, with § 1225(b)(1)'s two provisions authorizing detention as part of the expedited removal scheme's credible fear screening process, § 1225(b)(1)(B)(ii) and (b)(1)(B)(iii)(IV). Neither applies. J.R. is not and has never been in expedited removal proceedings, and so he has never received a credible fear screening. He thus cannot be detained based on a positive credible fear determination "at the time of [an] interview" with an asylum officer, § 1225(b)(1)(B)(ii), or based on a negative determination at such an interview or on administrative review, § 1225(b)(1)(B)(iii)(IV).

[7] Although Respondents in another case attempted to distinguish noncitizens who entered the United States without inspection from those who, like J.R., initially presented at a port of entry, any such distinction would be irrational because, as one district judge recently observed, "[i]t would, essentially, elevate aliens who make no effort to see[k] legal admission, but are held to be covered under the discretionary provisions of § 1226, over those who attempt to enter legally and are paroled in the United States, who Respondents argue should be subject to mandatory detention under § 1225." *Varela Padron*, No. 3:26-cv-301, ECF No. 13.

85. That leaves § 1225(b)(2)(A), which has been Respondents' repeatedly invoked—and repeatedly rejected—excuse in similar cases, based on their new interpretation of the applicable statutes and regulations in an abrupt departure from decades of settled agency precedent. *See* ICE, "Interim Guidance Regarding Detention Authority for Applications for Admission" (July 8, 2026), https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission ("The only aliens eligible for a custody determination and release on recognizance, bond, or other conditions under [8 U.S.C. § 1226(a)] during removal proceedings are aliens admitted to the United States and chargeable with deportability under [§ 1227], with the exception of those subject to mandatory detention under [§ 1226(c)]."); *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) (reversing agency precedent and concluding that all individuals who enter without admission fall under § 1225(b)(2)(A) and are thus ineligible for consideration of release on bond), *vacated by Maldonado Bautista v. Noem*, 2026 WL 468284 (C.D. Cal. Feb. 18, 2026), *vacatur stayed pending appeal*, No. 26-1044 (9th Cir. Mar. 6, 2026), ECF No. 5. As discussed above, § 1225(b)(2)(A) provides 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." § 1225(b)(2)(A).

86. By its terms, and as the statutory structure confirms, this provision applies only in the context of an inspection by an "examining immigration officer." § 1225(b)(2)(A); *see, e.g.*, *Tanchez v. Noem*, 2026 WL 125184, at *8 (D. Utah Jan. 16, 2026) (concluding that § 1225 is "directed at the border context" and that § 1225(b)(2)'s text "suggest[s] a moment in time when a noncitizen is crossing or has recently crossed a border, not an indefinite status that applies whenever a noncitizen charged with inadmissibility encounters an immigration official"). And it

mandates detention only where the noncitizen being inspected is (i) "an applicant for admission," (ii) "seeking admission," and (iii) "not clearly and beyond a doubt entitled to be admitted." *Id.*

87. Because J.R. was neither "seeking admission" nor undergoing an inspection by an "examining immigration officer" when he was detained, § 1225(b)(2)(A) does not apply.

88. "Admission" means "the lawful entry of the [noncitizen] into the United States after inspection and authorization by the immigration officer," § 1101(a)(13)(A), except that parole does not count, § 1101(a)(13)(B).

89. Congress did not define "seeking admission." *Martinez*, 792 F. Supp. 3d at 218. As a result, "seeking" takes its ordinary meaning. *See, e.g.*, *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1481-82 (2021) ("[U]ntil and unless someone points to evidence suggesting otherwise, affected individuals and courts alike are entitled to assume statutory terms bear their ordinary meaning."). As relevant here, to "seek" means "[t]o try to obtain" or "to try to bring about or effect." *Seek* (*v.*), Oxford English Dictionary (2d ed. 1989) (def.7a); *see, e.g.*, *Kashranov v. Jamison*, 2025 WL 3188399, at *6 (E.D. Pa. Nov. 14, 2025) (recognizing that "seek" is "an active verb" that "means 'to try to acquire or gain'" (quoting *Seek*, Merriam-Webster's Collegiate Dictionary (10th ed. 1996)). And by using "[t]he present participle, expressed in the progressive '-ing' form," Congress "convey[ed] ongoing and continuous action rather than a completed or static state." *Kashranov*, 2025 WL 3188399, at *6; *accord J.G.O.*, 2025 WL 3040142, at *3.[8] "Seeking" thus "necessarily implies some sort of present tense action." *Martinez*, 792 F. Supp. 3d at 218.

[8] *See also, e.g.*, *United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of verb tense is significant in construing statutes."); *Westchester Gen. Hosp., Inc. v. Evanston Ins. Co.*, 48 F.4th 1298, 1307 (11th Cir. 2022) ("A present participle is used to signal present and continuing action."); *Shell v. Burlington N. Santa Fe Ry. Co.*, 941 F.3d 331, 336 (7th Cir. 2019) (the word "having" means "presently and continuously," not "something in the past that has ended or something yet to come"); *Matter of M-D-C-V-*, 28 I. & N. Dec. 18, 23 (BIA 2020) ("The use of

90. Taking the ordinary meaning of "seeking" together with the statutory definition of "admission," "seeking admission" means "*actively* trying to acquire or gain 'lawful entry ... after inspection and authorization by an immigration officer.'" *Kashranov*, 2025 WL 3188399, at *6 (alteration in original) (quoting § 1101(a)(13)(A)); *see also, e.g.*, *Tumba v. Francis*, 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025) ("seeking admission" requires "some active desire of process toward admission"). And "entry," which Congress also did not define, "refers to a physical act of crossing into a place, emphasizing tangible movement rather than legal status." *Id.* (collecting dictionary definitions); *accord J.G.O.*, 2025 WL 3040142, at *3.

91. "Putting that all together, 'seeking admission' requires [a noncitizen] to *continue* to want to *go into* the country." *J.G.O.*, 2025 WL 3040142, at *3; *accord Campbell v. Almodovar*, 2025 WL 3538351, at *6 (S.D.N.Y. Dec. 10, 2025) ("All combined, 'seeking admission' means presently trying to enter the United States at or near the border."). Particularly when read in the context of a provision addressing "inspections and detentions of [noncitizens] at the border," the term "seeking admission" "describes active and ongoing conduct—physically attempting to come into the United States, typically at a border or port of entry and presenting oneself for inspection and authorization." *Kashranov*, 2025 WL 3188399, at *6-7; *accord Rodriguez-Acurio*, 2025 WL 3314420, at *22 ("Under a straightforward reading of the statute, seeking admission is meant to refer to those who are presenting themselves at the border, or who were recently apprehended just after entering." (cleaned up)).

92. As "a chorus of district courts have held, a non-citizen who is already in the country pending the outcome of removal proceedings is not 'seeking admission,' and therefore is not

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the present progressive tense 'arriving,' rather than the past tense 'arrived,' implies some temporal or geographic limit[.]").

subject to Section 1225(b)(2)(A)'s mandatory detention." *Ambroladze v. Maldonado*, 2026 WL 295405, at *2 (E.D.N.Y. Feb. 4, 2026). After all, "you can't go into a place where you already are." *J.G.O.*, 2025 WL 3040142, at *3; *accord Kashranov*, 2025 WL 3188399, at *6 ("While Mr. Kashranov is an applicant for admission, he is not seeking admission. He's already here.").

93. Here, because J.R. was neither "presenting himself at the border" nor "recently apprehended just after entering this country," he was not "seeking admission" at the time of his detention. *Mejia-Pina v. Bondi*, 2026 WL 482635, at *2 (E.D.N.Y. Feb. 20, 2026). "Rather, at the time that ICE detained him, [J.R.] had been living in the interior of the United States since" December 2022. *Id.*; *accord Munoz Caraguay*, 2026 WL 294842, at *2 (same, for a petitioner likewise "paroled into the country under 8 U.S.C. § 1182(d)(5)(A)" in December 2022). "[H]e was no longer seeking to enter the country. He was already in—and had been for several years. If anything, [J.R.] was seeking to obtain a lawful means to *remain* here through his asylum application. Therefore, § 1225 does not apply to him." *Campbell*, 2025 WL 3538351, at *6 (cleaned up) (collecting cases).[9]

94. This straightforward reading had been how the government itself consistently understood and applied the statute from IIRIRA's inception. *See, e.g.*, *Tanchez*, 2026 WL 125184, at *12-13. Nevertheless, Respondents have recently abandoned that longstanding understanding,

[9] *See also, e.g.*, *Covelli-Chaparro v. Bondi*, 2026 WL 118842, at *6 (E.D.N.Y. Jan. 15, 2026) ("Here, USBP paroled [petitioner] into the interior of the United States on or around May 1, 2022, and he has continuously resided in this country since then. Like Ms. Rodriguez-Acurio, [petitioner] is an applicant for admission to the United States. But, clearly, at the time of his arrest, he was not presenting himself at the border nor was he recently apprehended just after entering. Therefore, he is not 'seeking admission' as required for mandatory detention under Section 1225(b)(2)."); *Hyppolite v. Noem*, 2025 WL 2829511, at *9 (E.D.N.Y. Oct. 6, 2025) ("In considering § 1225(b)(20(A) within its statutory context, it was clearly intended to apply to noncitizens who are *presently* seeking to enter the United States, and not those, like Hyppolite, who have lived in the country for almost three years."); *Villegas ex rel. Guzman Andujar v. Francis*, 2025 WL 3215597, at *3 (S.D.N.Y. Nov. 18, 2025); *Rodriguez-Acurio*, 2025 WL 3314420, at *22.

arguing instead that § 1225(b)(2) applies to all applicants for admission who are not subject to § 1225(b)(1)—and thus to anyone who has not yet been admitted, no matter whether they are arriving at the border or living in the interior, and no matter how long they have been here. *See id.*

95. Courts in this District have resoundingly rejected Respondents' newfound interpretation, with few exceptions. *See, e.g.*, *J.U.*, 805 F. Supp. 3d at 494-96; *Artiga*, 2025 WL 2829434, at *7-8; *Covelli-Chaparro*, 2026 WL 118842, at *5; *Rodriguez-Acurio*, 2025 WL 3314420, at *22; *Crespo Tacuri v. Genalo*, 2026 WL 35569, at *5 (E.D.N.Y. Jan. 6, 2026). For good reason: Among other problems, it ignores the plain meaning of "seeking admission" discussed above; sets aside the statutory definition of "applicant for admission" in favor of the colloquial sense of "applying"; and creates superfluity in both §§ 1225(b)(2)(A) and 1226(c).

96. Respondents' view boils down to the idea that "an 'applicant for admission' is synonymous with a person 'seeking admission' because . . . one cannot apply for something without also seeking it." *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 161 F.4th 1048, 1061 (7th Cir. 2025). That "has some superficial appeal," but it requires setting aside Congress's definition of an "applicant for admission." *Id.* (holding that the government was unlikely to succeed on the merits). Because any noncitizen "who has not been admitted or who arrives in the United States" counts as "an applicant for admission," § 1225(a)(1), the term is "something of a misnomer," *Tumba*, 2025 WL 3079014, at *3. "It doesn't require an application of any sort." *Tumba*, 2025 WL 3079014, at *3. Besides, as discussed, "seeking admission" does not stand alone; § 1225(b)(2)(A) uses the term in the context of an inspection at or near the border.

97. Respondents' position also creates superfluity twice over, "violating one of the cardinal rules of statutory construction." *Castañon-Nava*, 161 F.4th at 1061. "[O]n top of everything else," Respondents' "double violation of the interpretive principle that every clause and

word of a statute should have meaning dooms [their] view." *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 143 S. Ct. 1720, 1731 (2023).

98. First, Respondents' "construction would render § 1225(b)(2)(A)'s use of the phrase 'seeking admission' superfluous." *Castañon-Nava*, 161 F.4th at 1061; *accord Tanchez*, 2026 WL 125184, at *9; *Kashranov*, 2025 WL 3188399, at *7; *Campbell*, 2025 WL 3538351, at *7; *Rodriguez-Acurio*, 2025 WL 3314420, at *23. If any noncitizen "who is an applicant for admission" was necessarily also "seeking admission," § 1225(b)(2)(A), "then there would be no need to include the phrase 'seeking admission' in the statute," *Campbell*, 2025 WL 3538351, at *7. Besides, by using the terms "applicant for admission" and "seeking admission" together in the same sentence, Congress signaled that they have different meanings. The superfluity created by equating those terms confirms that the "usual presumption that differences in language like this convey differences in meaning" holds true here. *See Ysleta del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1939 (2022) (cleaned up).

99. Second, Respondents' reading "would likewise render superfluous the mandatory detention provisions found in § 1226(c)(1)(A), (D), and (E)." *Campbell*, 2025 WL 3538351, at *7. Each of those provisions mandates detention for certain "inadmissible" noncitizens, while the neighboring subparagraphs apply to certain "deportable" noncitizens. § 1226(c)(1). "If Congress had intended § 1225(b)(2) to apply to all noncitizens who had not been admitted, regardless of whether they were detained at the border, then there would have been no need to again specify mandatory detention for certain categories of inadmissible noncitizens (but not others) under § 1226(c)." *Tanchez*, 2026 WL 125184, at *9.[10] "[T]hat kind of superfluity, in and of itself, refutes

[10] Perhaps these provisions could "still apply to visa overstays," but "there is no indication that Congress intended § 1226 to be so limited." *Campbell*, 2025 WL 3538351, at *7 n.7 (cleaned up).

[Respondents'] reading." *Pulsifer v. United States*, 144 S. Ct. 718, 731 (2024). As the Supreme Court has recognized, when a construction "renders an entire subparagraph meaningless, ... the canon against surplusage applies with special force." *Id.* at 731-32. Respondents' construction does that thrice over, leaving three of five subparagraphs with no work to do.

100. There is still more. Congress added § 1226(c)(1)(E) in the Laken Riley Act just last year—yet Respondents' reading would nullify that amendment. Congress is unlikely to have amended § 1226(c) just to add a pointless subparagraph. *See, e.g.*, *United States v. Quality Stores, Inc.*, 572 U.S. 141, 148 (2014) ("When Congress acts to amend a statute, [courts] presume it intends its amendment to have real and substantial effect.").

101. Finally, "the difference in treatment between a noncitizen at the border and one already in the United States fits within the broader context of our immigration law." *Castañon-Nava*, 161 F.4th at 1061. "The distinction between [a noncitizen] who has effected an entry into the United States and one who has never entered runs throughout immigration law." *Zadvydas*, 533 U.S. at 693. The government's longstanding interpretation was thus "consonant with the core logic of our immigration system." *Martinez*, 792 F. Supp. 3d at 222. Respondents' new view is not.

3. The expiration of J.R.'s parole makes no difference here.

102. In some cases, Respondents have sought to distinguish noncitizens whose parole automatically expired before their arrest and detention. "But parole status speaks only to whether [J.R.] has been admitted, not whether he was *seeking* admission at the time of his detention . . . ." *Sarmiento Guerrero v. Noem*, __ F. Supp. 3d __, 2025 WL 3214787, at *6 (E.D.N.Y. Nov. 18, 2025). J.R.'s parole did not constitute "an admission," and so when it ended, he remained an applicant for admission whose case was "to be dealt with in the same manner as that of any other applicant for admission." § 1182(d)(5)(A); *see Campbell*, 2025 WL 3538351, at *6. So, just like

any other applicant for admission who is already present in the country, and not seeking to enter it, J.R. was not "seeking admission" within the meaning of § 1225(b)(2)(A) at the time of his detention and thus could be detained only under § 1226(a). *See, e.g.*, *Campbell*, 2025 WL 3538351, at *6; *Qasemi v. Francis*, 2025 WL 3654098, at *11 (S.D.N.Y. Dec. 17, 2025); *Montiel v. Raycraft*, 2026 WL 32076, at *3 (W.D. Mich. Jan. 6, 2026); *Ivonin v. Rhoney*, 2026 WL 199283, at *4-5 (W.D.N.Y. Jan. 26, 2026) (collecting cases).

103. Nothing in the text of § 1182(d)(5)(A) mandates detention after a noncitizen's parole expires. Indeed, the Supreme Court could "find nothing in [§ 1182(d)(5)(A)'s] text that affirmatively authorizes detention, much less indefinite detention." *Clark v. Martinez*, 543 U.S. 371, 385 (2005). Although the statute calls for the noncitizen to "return or be returned to the custody from which he was paroled," § 1182(d)(5)(A), it is best read to "refer[] simply to DHS custody," not any "specific statutory authority." *See Cabrera Martinez v. Marich*, __ F. Supp. 3d. __, 2025 WL 3771228, at *6-7 (W.D.N.Y. Dec. 31, 2025). Indeed, that "custody" need not be "physical custody" at all; when Congress meant "detention," it said so. *Qasemi*, 2025 WL 3654098, at *10; *accord Daza v. Albarran*, 2026 WL 81518, at *3 (N.D. Cal. Jan. 12, 2026).

104. Moreover, regardless of J.R.'s parole expiration in December 2023, he has continued to live in the United States with the government's permission ever since. Before his parole expired, the government issued him a notice in July 2023 acknowledging receipt of his asylum application and stating that he could stay here pending a decision on his application. Ex. D. J.R. also applied for and was granted TPS from May 2024 through April 2025 and has a pending application to renew it. *Id.* ¶¶ 12, 17; Ex. F; Ex. G. And despite his continued involvement in immigration proceedings, Respondents never previously sought to detain J.R. Even if Respondents could have pretended that J.R. was still at the border and had never really entered in December

2023, that was not the reality when it suddenly decided to arrest him in August 2025, and it is not the reality today. J.R. has lived and built connections in this country for more than three years—including more than two years after his parole expired. "The statute does not require the Court to pretend that [J.R.] was never paroled and permitted to live freely in this country." *Qasemi*, 2025 WL 3654098, at *11. Although he remains an applicant for admission like "any other," *see* § 1182(d)(5)(A), the simple fact is that he is not at the border and not seeking admission. When ICE detained him, "[h]e was already in." *Campbell*, 2025 WL 3538351, at *6 (addressing a noncitizen whose parole had automatically expired years before his detention).

C. Respondents' failure to comply with § 1226(a) warrants J.R.'s immediate release.

105. Because the only statutory provision that could provide a legal basis for J.R.'s detention is § 1226(a), an ICE officer was required to make an "initial custody determination." *Lopez Benitez*, 2025 WL 2371588, at *3. Detainees who object to the initial determination "may request a bond hearing before an [immigration judge] at any time before a removal order becomes final." *Id.*; *see* 8 C.F.R. §§ 236.1(d)(1), 1236.1(d)(1).

106. However, because Respondents have taken the erroneous position that individuals like J.R. are subject to the mandatory detention provision at § 1225(b), not the discretionary detention provision at § 1226(a), J.R. was not provided an individualized custody determination by ICE at the time of his detention, let alone the opportunity to seek an individualized custody *redetermination* hearing (*i.e.*, a bond hearing) before an immigration judge. Therefore, J.R.'s detention was unlawful at its inception and warrants his immediate release. *See Hernandez Lazo*, 2026 WL 303430, at *16 ("A bond determination by a DHS officer or an immigration judge would not remedy the core constitutional violation at issue here. Mr. Hernandez Lazo's detention was

unlawful from its inception because ICE detained him under the wrong statute and without any notice or opportunity to be heard, much less the procedures required under Section 1226(a).").

III. In the Alternative, J.R.'s Prolonged Detention for More Than Six Months Requires a Bond Hearing at Which the Government Bears the Burden of Proof by Clear and Convincing Evidence.

107. As of the filing of this petition, J.R. has been detained for more than six months. In that time, he has never received a bond hearing before an immigration judge. For the reasons set forth above, J.R.'s detention was inconsistent with constitutional due process protections, and so the Court should order his immediate release. But even if Respondents lawfully detained J.R. in August 2025, J.R.'s continued detention without a bond hearing cannot be justified now, in light of his prolonged detention with no clear end in sight. *See Velasco Lopez*, 978 F.3d 842 at 854 (holding that individuals subject to prolonged detention under § 1226(a) must be afforded process in addition to that provided by an ordinary bail hearing).

108. Here, J.R. has been detained for over six months without an initial bond hearing before an immigration judge and without any individualized review, and his detention is nowhere near its end. Given Respondents' apparent view that J.R. is subject to mandatory detention, J.R.'s detention will likely continue for many months or even years through merits proceedings and any necessary appeals. Respondents have categorically refused to provide J.R. with the bare minimum—the opportunity to seek an initial bond hearing before an immigration judge—and now that he has been incarcerated for six months and counting, heightened procedural protections are required.

109. "The longer the duration of incarceration, the greater the deprivation." *Velasco Lopez*, 978 F.3d at 852. Accordingly, "'as the period of confinement grows,' so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Id.* at 853 (alteration incorporated) (quoting *Zadvydas*, 533 U.S. at 701).

110. The Fifth Amendment entitles noncitizens to the protections of the Due Process Clause. *Velasco Lopez*, 978 F.3d at 850 (citing *Reno*, 507 U.S. at 306). "[T]he Due Process Clause applies to all 'persons' within the United States," including noncitizens, "whether their presence here is lawful, unlawful, temporary or permanent." *Zadvydas*, 533 U.S. at 693.

111. Heeding the requirements of the Due Process Clause, "[t]he Supreme Court has consistently held the Government to a standard of proof higher than a preponderance of the evidence where liberty is at stake, and has reaffirmed the clear and convincing standard for various types of civil detention." *Velasco Lopez*, 978 F.3d at 855 (collecting cases).

112. Accordingly, there is an "'overwhelming consensus' of courts in this Circuit that have held that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden to justify continued detention of a noncitizen who is detained pursuant to § 1226(a), even absent 'prolonged detention.'" *Banegas v. Decker*, 2021 WL 1852000, at *3 (S.D.N.Y. June 7, 2021) (quoting *Quintanilla v. Decker*, 2021 WL 707062, at *3 (S.D.N.Y. Feb. 22, 2021)); *see also Lopez Cano v. Decker*, 2022 WL 17584156, at *3 (S.D.N.Y. Dec. 12, 2022) (finding that the right to a "procedurally proper bond hearing does not depend on the length of a petitioner's detention"); *Aparicio Jimenez v. Decker*, 2021 WL 826752, at *8 (S.D.N.Y. Mar. 3, 2021) (declining the government's invitation to interpret *Velasco Lopez* as holding that the agency's burden allocation is unconstitutional *only* when detention has become prolonged); *J.C.G. v. Genalo*, 2025 WL 88831, at *9 (S.D.N.Y. Jan. 14, 2025) (same).

113. In *Velasco Lopez*, the Second Circuit affirmed the "important constitutional limitations" on the government's power to detain noncitizens pending removal proceedings pursuant to § 1226(a). 978 F.3d at 855. The court reached its conclusion—requiring the burden of proof on the government to establish the necessity of continued detention by clear and convincing

evidence—by conducting a ground-up procedural due process analysis, using the three-factor *Mathews* test. *See id.* at 851, 855. The Second Circuit cautioned that "detention under § 1226(a) is frequently prolonged because it continues until all proceedings and appeals are concluded." *Id.* at 852. And it recognized the Supreme Court's emphasis in *Demore v. Kim*, *supra*, that removal proceedings should be short, highlighting that Mr. Velasco Lopez's detention had far exceeded the average length of detention contemplated there—1.5 months. *Velasco Lopez*, 978 F.3d at 852 (*citing Demore*, 538 U.S. at 529); *see also Hernandez-Lara*, 10 F.4th at 35–39 (following the reasoning in *Velasco Lopez* and holding that due process requires the burden be placed on the government to prove dangerousness and flight risk for any petitioner detained under § 1226(a)).

114. The Second Circuit held that the agency's bond procedures were constitutionally inadequate for Mr. Velasco Lopez, who had been detained for over fourteen months. *See Velasco Lopez*, 978 F.3d at 853. The proper remedy, the court held, was a new bond hearing at which the government bore the burden of justifying continued detention by clear and convincing evidence. *Id.* at 855–56.

115. Although the *Velasco Lopez* court did not reach the question of whether the government must always bear the burden of proof at bond hearings under § 1226(a), *see* 978 F.3d at 855 n.13, its analysis makes clear that such protections are owed all persons seeking release under § 1226(a), regardless of the length of detention. *See Hernandez-Lara*, 10 F.4th at 35-39 (following the reasoning in *Velasco Lopez*). At the very least, its analysis applies to a case like this, where the detention has already exceeded six months and is set to continue indefinitely without any individualized review. *See J.I.T. v. Francis et al.*, 2025 WL 3295851, at *3–4 (S.D.N.Y. Nov. 26, 2025) (applying *Velasco Lopez* and the *Mathews* test to conclude that a burden-shifted

bond hearing was required where the petitioner had been detained for six months at the time of the habeas petition and nine months at the time of adjudication).

116. Applying the *Mathews* factors here likewise compels the conclusion that the government must provide a bond hearing at which it bears the burden of proof by clear and convincing evidence to justify continued detention.

117. First, the private interest affected by government action "is the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851 (citing *Hamdi*, 542 U.S. at 529). As the *Velasco Lopez* court recognized, "commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." 978 F.3d at 851 (citing *Jones v. United States*, 463 U.S. 354, 361 (1984)). Importantly, at MDC, J.R. is "not 'detained'" so much as he is "incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes." 978 F.3d at 850; *see also Chavez-Alvarez*, 783 F.3d at 478 ("[M]erely calling a confinement 'civil detention' does not, of itself, meaningfully differentiate it from penal measures." (citing *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997))).

118. Second, there is a high risk of an "erroneous deprivation" of liberty through the current procedures and a significant value to providing notice and a hearing. The procedures afforded to J.R.—"absolutely none," *Valdez*, 2025 WL 1707737, at *4—"seriously impact" J.R.'s ability to secure bond or release, *Velasco Lopez*, 978 F.3d at 852. Given the absence of other key safeguards, requiring Respondents to do the bare minimum by providing J.R. with a constitutionally adequate bond hearing before an immigration judge is essential. *See Velasco Lopez*, 978 F.3d at 852–54 (holding that the second *Mathews* factor "weigh[ed] heavily" in the noncitizen's favor).

119. Third, the proposed procedure—a § 1226(a) bond hearing before an immigration judge where Respondents bear the burden of proof by clear and convincing evidence—does not meaningfully prejudice the government's interest in mitigating danger and risk of flight during removal proceedings. To the contrary, the government has no legitimate interest in detaining noncitizens who are neither dangerous nor a flight risk, and it does have an interest in "minimizing the enormous impact of incarceration in cases where it serves no purpose." *Velasco Lopez*, 978 F.3d at 852; *accord Aparicio-Villatoro v. Barr*, 2019 WL 3859013, at *6 (W.D.N.Y. Aug. 16, 2019) ("[T]he Court cannot discern any legitimate Government interest, beyond administrative convenience, in detaining noncitizens generally while their immigration proceedings are pending and no final removal order has been issued.").

120. To be clear, J.R. is entitled to immediate release because of Respondents' due process violations in detaining him years after releasing him into the United States without any individualized consideration and without any prior notice, showing of changed circumstances, or opportunity to be heard before a neutral decisionmaker. Failing that, J.R.'s prolonged detention without individualized consideration entitles him to a constitutionally adequate bond hearing at which the government bears the burden of proof by clear and convincing evidence to justify continued detention. *See Velasco Lopez*, 978 F.3d at 852; *Black v. Decker*, 103 F.4th 133, 151–52, 157–58 (2d Cir. 2024) (holding that even in the mandatory detention context, seven months was long enough to warrant heightened protections against arbitrary detention, including a bond hearing where ICE had to bear the burden by clear and convincing evidence); *see also Raspoutny v. Decker*, 708 F. Supp. 3d 371, 384 (S.D.N.Y. Dec. 22, 2023) (finding that seven months of detention under § 1226(a) warranted a burden-shifted bond hearing).

IV. Due Process Requires That Respondents Analyze J.R.'s Ability to Pay When Setting a Bond Amount and Alternatives to Detention That Mitigate Any Risk of Danger or Flight.

121. In the event the Court orders a bond hearing, the Court should specify that due process requires the government to demonstrate by clear and convincing evidence that any danger or flight risk cannot be mitigated by bond or any alternatives to detention. The Court should further specify that the immigration judge must also meaningfully consider alternatives to detention as well as J.R.'s ability to pay when setting a bond amount.

122. Immigration detention must bear "reasonable relation to the purpose for which the individual [was detained]." *Zadvydas*, 533 U.S. at 690. The government's only legitimate interests here are in "ensuring the appearance of [noncitizens] at future immigration proceedings" and "[p]reventing danger to the community." *Id.* If a certain bond amount or some less-restrictive alternative condition could vindicate the government's interest in appearance at future immigration proceedings or ensuring the safety of the community, then continuing to incarcerate an individual regardless is an unjustified deprivation of liberty.

123. Failing to consider ability to pay when setting a bond amount "creates a serious risk that the noncitizen will erroneously be deprived of the right to liberty purely for financial reasons." *Black*, 103 F.4th at 158 (holding that the district court properly required the immigration judge to consider the noncitizen's ability to pay and alternatives to detention during a constitutionally mandated bond hearing). The purpose of setting a specific bond amount is to produce a sufficient incentive for the detainee to appear at future proceedings. *Hernandez v. Sessions*, 872 F.3d 976, 991 (9th Cir. 2017). That necessarily depends on the noncitizen's financial circumstances; the amount needed to disincentivize flight for an indigent individual is less than that for a wealthy individual. *Id.*

124. Although the Second Circuit's decision in *Black* did not settle whether immigration judges must always consider ability to pay and alternatives to detention, the decision is consistent with the emerging consensus in this Circuit that due process categorically requires considering these factors. *See, e.g.*, *Quintanilla*, 2021 WL 707062, at *4; *M.P.L. v. Arteta*, 2025 WL 2938993, at *6 (S.D.N.Y. Oct. 16, 2025) (collecting cases). At least one court of appeals has reached the same conclusion. *See Hernandez*, 872 F. 3d at 991-94. These decisions recognize that a "bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests." *Id.* at 991.

CLAIMS FOR RELIEF

COUNT I:
Violation of Procedural Due Process—Detention Without Notice or a Pre-Deprivation Hearing

125. J.R. realleges and incorporates by reference the paragraphs above.

126. 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 [Fifth Amendment's Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

127. The August 2025 detention by ICE caused J.R. to be separated from his community and placed in a carceral setting. His detention infringed upon a liberty interest that cannot be revoked without due process. *See Hamdi*, 542 U.S. at 529 (plurality opinion) (describing "the most elemental of liberty interests—the interest in being free from physical detention"); *Ceesay*, 2025 WL 1284720, at *13 ("[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.").

128. Under a *Mathews* analysis, at minimum, Respondents were required to provide individualized consideration and notice, with a showing of changed circumstances, and opportunity to respond at a hearing before a neutral decisionmaker before incarcerating J.R. in ICE detention. *See, e.g.*, *Rodriguez-Acurio*, 2025 WL 3314420, at *27 (recognizing that a noncitizen whose humanitarian parole had expired nonetheless "has a liberty interest in being free from detention" and is entitled to due process protections).

129. Respondents violated J.R.'s Fifth Amendment due process rights by detaining him without providing adequate procedural protections to ensure that the detention served a valid governmental purpose. *See Mohd*, 2026 WL 363525, at *3 (granting habeas relief; holding that § 1225(b)(1) cannot be used to detain someone "paroled into the United States," "regardless of whether that parole has since expired"; and reiterating the petitioner's liberty interest in freedom from detention); *Paza Iza*, 2026 WL 31378, at *2 (holding that re-detention after parole had expired implicated a "significant liberty interest in being free from imprisonment" and thus required constitutionally adequate process).

130. The Court should find that J.R.'s detention absent individualized consideration and notice, with a showing of changed circumstances, and an opportunity to respond at a pre-deprivation hearing before a neutral decisionmaker violates the Fifth Amendment's Due Process Clause, and it should therefore order immediate release.

COUNT II:
Violation of the INA

131. J.R. realleges and incorporates by reference the paragraphs above.

132. Contrary to Respondents' current interpretation of the INA, the mandatory detention provisions in § 1225(b) do not apply to noncitizens like J.R. J.R. was not in expedited removal proceedings, *see* § 1225(b)(1), and was not seeking admission to the United States at the

time of his detention, *see* § 1225(b)(2)(A). Rather, he was already present in the country awaiting the adjudication of his application for asylum, withholding of removal, and CAT protection in removal proceedings under § 1229a.

133. Because J.R. was already residing in the United States and had established connections here while awaiting resolution of his removal proceedings at the time of his detention, the only available statutory authority was § 1226(a).

134. Because Respondents failed to conduct an initial custody determination as required by § 1226(a), J.R.'s detention was unlawful at its inception, and he is therefore entitled to immediate release.

135. In any event, Respondents' failure to provide a bond hearing before a neutral arbiter is contrary to § 1226(a). J.R. is therefore entitled at least to an immediate bond hearing.

COUNT III:
Violation of Procedural Due Process—Unreasonably Prolonged Detention Without an Individualized Bond Hearing

136. J.R. realleges and incorporates by reference the paragraphs above.

137. 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 [Fifth Amendment's Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

138. J.R.'s detention without a bond hearing, which has lasted over six months and will likely span many more months—or even years—has become unreasonably prolonged in violation of the Due Process Clause. Without this Court's intervention, J.R. will remain detained in violation of his due process rights.

139. The Court should find that J.R.'s continued detention without a bond hearing is unconstitutional. To remedy J.R.'s unreasonably prolonged detention, the Court should, at a

minimum, order an individualized bond hearing at which (i) the government bears the burden to prove by clear and convincing evidence that continued detention is warranted and (ii) the adjudicator must consider J.R.'s ability to pay when setting a bond amount and whether any alternatives to detention mitigate any risk of danger or flight.

REQUEST FOR RELIEF

140. For these reasons, J.R. requests that this Court grant the following relief:

a. Order that J.R. shall not be transferred outside the Eastern District of New York while this habeas petition is pending;

b. Order Respondents to show cause why this petition should not be granted within three days;

c. Issue a writ of habeas corpus requiring that Respondents release J.R. immediately and not re-detain him absent notice and a pre-deprivation hearing before a neutral decisionmaker at which the government bears the burden of proof by clear and convincing evidence that re-detention is warranted based on a change in relevant circumstances establishing risk of danger or flight that cannot be mitigated by bond or alternatives to detention;

d. In the alternative, order Respondents to provide J.R. with a bond hearing under § 1226(a) within fourteen days, at which (i) the government must bear the burden to prove by clear and convincing evidence that continued detention is warranted based on risk of danger or flight that cannot be mitigated by bond or alternatives to detention, and (ii) the adjudicator must consider J.R.'s ability to pay when setting a bond amount and whether alternatives to detention could mitigate any risk of danger or flight;

e. Award J.R. attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, and on any other basis justified under law; and

f. Grant any other and further relief that this Court deems just and proper.

Dated: March 13, 2026

Respectfully submitted,

/s/ Sayoni Maitra

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**motion to proceed pro hac vice forthcoming*

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of J.R. because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: March 13, 2026

Respectfully submitted,

/s/ Sayoni Maitra

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