UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

N.G.C.,

Petitioner,

v.

RAUL MALONADO Jr., *in his official capacity as* Warden of the Metropolitan Detention Center; KENNETH GENALO, *in his official capacity as* Field Office Director of New York, Immigration and Customs Enforcement; TODD LYONS, *in his official capacity as* Acting Director U.S. Immigrations and Customs Enforcement; KRISTI NOEM i*n her official capacity as* Secretary of Homeland Security; PAM BONDI, *in her official capacity as* Attorney General,

Respondents.

Case No. 26-1559

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner N.G.C.[1] was born in Guatemala and came to the United States through the border in June of 2021 as a young adult in search of a better life.

2. On or about November 28, 2025, at around 4:00 p.m., Mr. G.C. was walking to his home in Brooklyn when he was racially profiled and approached by an Immigration and Customs Enforcement ("ICE") officer. Ex. A, Declaration of N.G.C. ("Pet. Decl."), ¶¶ 1–2. The officer asked him for identification in Spanish, without providing any context or reason. *Id.* ¶ 2. After using gross and unreasonable force, four ICE officers arrested Mr. G.C. *Id.* ¶ 4. Mr. G.C. was forcibly shoved into a car and taken to Orange County Jail in Goshen, New York. Ex. B, Notice to Appear ("NTA")) at 2. On or about February 2, 2026, he was transferred to the Metropolitan

[1] A motion for leave to proceed by pseudonym is filed concurrently with this Petition.

Detention Center ("MDC") in Brooklyn, New York, where ICE continues to detain Mr. G.C. Respondents are unlawfully detaining Petitioner in violation of his statutory and constitutional rights.

3. Petitioner's detention is unlawful because the Department of Homeland Security ("DHS") is erroneously subjecting him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) pursuant to new agency policy. Respondents' new legal interpretation is plainly contrary to the statutory framework of the Immigration and Nationality Act ("INA") and decades of agency practice applying 8 U.S.C. § 1226(a)—*not* § 1225(b)—to people like Petitioner. Respondents' misclassification of Petitioner as subject to "mandatory detention" is a position that hundreds of district courts across the country—including in this District—have found to be a violation of the INA.

4. Moreover, ICE detained Petitioner without any individualized review of the necessity of that detention, as required by 8 U.S.C. § 1226(a) and due process, and there is no valid basis for his ongoing immigration detention as he does not pose a flight risk or danger. Instead, he has no criminal history[2] and prior to his sudden arrest by ICE resided in Brooklyn, where he worked in a pizza shop and in construction. Due to Respondents' unlawful actions, however, Mr. G.C., was traumatized and embarrassed to be violently arrested in such a way in public, especially having never before been arrested. He has since been suffering at MDC, a federal jail plagued with inhumane conditions, including lack of access to medical care and rampant violence.

5. Accordingly, Petitioner seeks a writ of habeas corpus ordering that Respondents immediately release him.

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[2] While in the U.S, his only contact with law enforcement consist of a non-criminal violation for an open container. Ex. C, Form I-213 at 1.

JURISDICTION AND VENUE

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

7. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All-Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

8. Venue is proper in this District under 28 U.S.C. § 2241(d); 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1). Venue is proper in this District because N.G.C. is presently detained within this District at MDC, which is located at 80 29th St, Brooklyn, NY 11232.

REQUIREMENTS OF 28 U.S.C. § 2243

9. 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.*

10. 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) (emphasis added). "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) (citation omitted).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There is no statutory requirement of exhaustion of administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Abdi v. Nielsen*, 287 F. Supp. 3d 327, 341 (W.D.N.Y. 2018). No exhaustion requirement applies to the claims raised in this petition because the Immigration Court and Board of Immigration Appeals ("BIA") lack jurisdiction to entertain constitutional challenges. *See Arango-Aradondo v. INS*, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I&N Dec. 343, 345-46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute).

18. Nor is further action with the agency necessary when pursuing administrative remedies would be futile or the agency has predetermined a dispositive issue. *See, e.g., Araujo-Cortes*, 35 F. Supp. 3d at 538-39; *Monestime v. Reilly*, 704 F. Supp. 2d 453, 456-7 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009). Here, the Board of Immigration Appeals has predetermined the issue in this appeal in a precedential decision, finding that Section 1225 applies to the detention of an individual who entered the United States without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

19. In addition, exhaustion is not required where a plaintiff raises a substantial constitutional question, as raised here. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

20. Even though exhaustion is not required, Petitioner has in fact tried to seek relief before the agency to no avail. Petitioner, through prior immigration counsel,[3] requested a custody redetermination pursuant to 8 C.F.R. § 1236, but on December 19, 2025, his request was denied for lack of jurisdiction. Ex. D, December 19, 2025 Order in Custody Redetermination Proceedings.

[3] Petitioner was not represented by the undersigned counsel during his bond hearing.

PARTIES

11. Petitioner N.G.C. is a 22-year-old national of Guatemala who has lived in the United States since June of 2021. ICE arrested him on or about November 28, 2025 and is detaining him at MDC.

12. Respondent Raul Maldonado, Jr. is named in his official capacity as the Warden of MDC. He is an employee of the Federal Bureau of Prisons, which partners with ICE to accept immigrant detainees at MDC. Respondent Maldonado's office is located at 80 29th St, Brooklyn, NY 11232.

13. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of the New York Field Office for ICE within DHS. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Genalo's address is New York ICE Field Office Director, 26 Federal Plaza, 9th Floor, Suite 9-10, New York, New York 10278.

14. Respondent Todd Lyons is sued in his official capacity as Acting Director of U.S. Immigrations and Customs Enforcement. As the Acting Director of ICE, Respondent Lyons is a legal custodian of Mr. Petitioner.

15. Respondent Kristi Noem is sued in her official capacity as Secretary of Homeland Security. As the head of the Department of Homeland Security ("DHS"), the agency tasked with enforcing immigration laws, Secretary Noem is Petitioner's ultimate legal custodian.

16. Respondent Pam Bondi is sued in her official capacity as Attorney General of the United States. As head of the U.S. Department of Justice, the agency that oversees the Executive Office for Immigration Review ("EOIR"), Attorney General Bondi is responsible for administration of the immigration laws as exercised by EOIR, pursuant to 8 U.S.C. § 1103(g). She is legally responsible for the pursuit of Petitioner's detention and removal.

STATEMENT OF FACTS

I. Petitioner Leaves Guatemala for the United States

21. Mr. G.C. is a 22-year-old citizen of Guatemala who has been living in the United States since June 2021.

22. Mr. G.C. fled Guatemala after experiencing sectarian violence related to land disputes between local villages in his hometown. Mr. G.C. entered the United States without inspection through the border between Mexico and Texas, on or about June of 2021. After entry to the United States, Mr. G.C. eventually settled in New York. Mr. G.C. has community support, including from his friend and U.S. citizen Mr. Chavez, who is willing to support him should he be released from custody. While in the U.S., Mr. G.C has successfully completed training at the Worker's Justice Project in Brooklyn, including courses related to the construction industry, in which he was working before being detained.

II. Petitioner's Arrest and Detention by ICE

23. On or about November 28, 2025, at around 4:00 p.m., Mr. G.C. was walking to his home in Brooklyn when he was approached by an ICE officer from the street. Ex. A, Pet. Decl. ¶ 2. Mr. G.C.'s life changed drastically in that moment—men, later found to be ICE agents, racially profiled him and used gross and unreasonable force.

24. Initially, this officer approached Mr. G.C. unprompted, and asked him for identification, without providing any context or reason. *Id.* Mr. G.C. was frightened and surprised because the man did not tell him who he was, who they worked for, or why they were stopping him, if he had been accused of a crime, or anything at all. *Id.* ¶ 3.

25. Fearing for his safety, Mr. G.C. ran towards the one place he felt he could be safe, his home. *Id.* He was able to reach the doorway to his building but was unable to enter before he was surrounded by four officers who wrestled him onto the ground and handcuffed him. *Id.* ¶ 4.

Mr. G.C. felt that it was very unreasonable to have four officers bigger than him wrestle him to the ground. Ex. A, Pet. Decl. ¶ 7.

26. Mr. G.C.'s building has a flight of stairs in the doorway. One of the ICE officers dragged Mr. G.C. down the stairs before Mr. G.C. was given an opportunity to get up and stand on his feet. *Id.*

27. Mr. G.C. was shoved into a car, where an officer forced his head down and ordered him not to look outside, where people were gathering around the area and recording the officers. *Id.* ¶ 5.

28. At the time of his arrest, Mr. G.C. was carrying a bookbag which contained his identification and an OSHA card he used for work. *Id.* ¶ 5. After his arrest, ICE searched and took Mr. G.C.'s identification without his consent.

29. Mr. G.C. is sure that he was approached by the officers because he looks Hispanic. *Id.* He later learned that ICE was in his neighborhood looking for someone else but remained in the area to stop anyone else they could after ICE had found their target. *Id.* ¶ 6; *see also* Ex. C, Form I-213 at 2 (noting ICE was surveilling the area to locate and arrest another individual).

30. Mr. G.C. was taken to the ICE office at 26 Federal Plaza in New York, New York. *Id.* ¶ 6.

31. While detained at 26 Federal Plaza, officers presented Mr. G.C. with a voluntary departure order, which would waive Petitioner's right to contest his deportation and send Petitioner to Guatemala. Ex. C, Form I-213 at 3. Mr. G.C. declined signing the order. *Id.* Officers also served Petitioner with a Notice to Appear, charging Mr. G.C. with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). *See* Ex. B, NTA.

32. On November 29, 2025, Mr. G.C. was taken to Orange County Jail in Goshen, New York. Ex. B, NTA at 1. On or about February 2, 2026, Mr. G.C. was transferred to MDC, where he has been detained since.

33. As someone who has never been arrested, Mr. G.C. was traumatized and embarrassed to be arrested in such a way in public. *Id.* ¶ 7.

34. Mr. G.C. is suffering declining mental health while in detention at MDC. He has never been detained before and has experienced difficulty sleeping, including nightmares of being arrested again. Ex. A, Pet. Decl. ¶ 7. MDC is also well-known for its inhumane conditions and rampant violence.[4]

III. Petitioner's Removal Proceedings

35. On or about November 28, 2025, the Department of Homeland Security (the "Department") uploaded a Notice to Appear on Mr. G.C., initiating removal proceedings. Ex. B, NTA. The Department proffered Mr. G.C.'s identification as alleged evidence in support of removal.

36. On February 19, 2026, Mr. G.C., through counsel, filed a motion to suppress the Department's evidence and terminate his removal proceedings. Ex. E, Motion to Suppress. The Department opposed the motion. On March 3, 2026, the Immigration Judge denied the motion to

[4] *See* Rachel Treisman, The NYC Jail Holding Maduro Has A History of Big Names and Dangerous Conditions, NPR (Jan. 5, 2026) ("Despite its high profile, the jail has struggled with issues of overcrowding, violence, medical neglect and inmate deaths in recent years — prompting several judges to refuse to send people there."), available at https://www.npr.org/2026/01/05/nx-s1-5666899/metropolitan-detention-center-ny-jail-maduro; *see also* Victoria Bekiempis, *"Dirty" and "Infested with Drugs": The New York Jail Holding Maduro and Mangione*, The Guardian (Jan. 7, 2026) , available at https://www.theguardian.com/us-news/2026/jan/07/new-york-jail-maduro-venezulea; Bill Hutchinson, *Federal Probe Ordered into "Inhumane" Conditions at New York Lockup*, ABC News (Feb. 7, 2019), available at https://abcnews.com/US/federal-probe-ordered-inhumane-conditions-york-lockup/story?id=60908269.

suppress and terminate and sustained the charge of removability against Mr. G.C. under INA § 212(a)(6)(A)(i). Ex. F, Order Denying Motion to Suppress.

37. Mr. G.C. will be seeking relief from removal to Guatemala in the form of an asylum application, to be filed on March 17, 2026 at the next court hearing. This application is premised on Mr. G.C.'s fear of return due to ongoing violence surrounding land disputes between different factions that often result in death and which the Guatemalan authorities turn a blind eye to.

LEGAL FRAMEWORK

I. Immigration Detention Framework

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

39. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an immigration judge. Section 1226(a) and the implementing regulations require an individualized determination as to the noncitizen's risk of flight and danger to the community. *See* 8 C.F.R. § 1236.1(c)(8); *id.* § 236.1(c)(8); *Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020). Noncitizens discretionarily detained pursuant to § 1226(a) are also generally entitled to a bond hearing at the outset of their detention. *See* 8 C.F.R. § 1003.19(a); *id.* § 1236.1(d). Whereas noncitizens who have been arrested, charged with, or convicted of certain crimes or fall under certain terrorism-related grounds of removability are subject to mandatory detention. *See* 8 U.S.C. § 1226(c).

40. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

41. Third, the INA provides for detention of noncitizens who have been ordered removed. *See* 8 U.S.C. § 1231(a)–(b).

II. Due Process Constraints on Immigration Detention

42. "It is well established that the Fifth Amendment entitles [noncitizens] to due process of law in deportation proceedings." *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty" that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690.

43. Although civil immigration detention is authorized by statute, to comply with Due Process detention can serve only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

44. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690-91. The Second Circuit has held that the *Matthews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)); *see also Black v. Decker*, 103 F.4th 133, 150-51 (2d Cir. 2024). The *Mathews* factors are: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews*, 424 U.S. at 335.

45. Due process requires, at a minimum, notice and an opportunity to respond prior to the deprivation of liberty at a hearing before a neutral adjudicator. *See, e.g.*, *Torres-Jurado v. Biden*, No. 19-CV-3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023) (explaining that, in parole revocation, "due process, at a minimum" requires the government to afford meaningful

Amendment right to due process because ICE detained her without notice, an opportunity to respond, or an individualized determination that she poses a flight risk or a danger to the community"); *Morocho v. Jamison*, No. 5:25-CV-05930, 2025 WL 3296300, at *1–3 (E.D. Pa. Nov. 26, 2025) (same, for noncitizen who had lived in the U.S. for 24 years and was detained by ICE officers "did not provide a reason for the stop; instead, they told him they were looking for another individual and directed him to exit the car"); *Cuy Comes v. DeLeon*, No. 25-CV-9283 (AT), 2025 WL 3206491, at *1, *6 (S.D.N.Y. Nov. 14, 2025) (same, for noncitizen who had lived in the U.S. at least five years and was detained by over a half a dozen agents in front of his home); *Lliguicota v. Cabezas*, No. 25-CV-17216, 2025 WL 3496300, at *1–2 (D.N.J. Dec. 5, 2025) (same, for noncitizen who had lived in the U.S. for nearly thirteen years and was stopped, questioned, and arrested by federal officers "while walking with his family near their residence"); *Lepe v. Andrews*, No. 1:25-CV-01163, 2025 WL 2716910, at *1 (E.D. Cal. Sept. 23, 2025) (same, for noncitizen who had lived in the U.S. for the last 32 years and was stopped and interrogated "while he was walking his dog near his home").

47. For individuals in immigration detention who are eligible for bond, at any bond hearing, due process requires the government to justify detention by a heavy burden. The Supreme Court has consistently held that when the government seeks to hold individuals in civil detention, the government must justify their detention with clear and convincing evidence. *See, e.g., United States v. Comstock*, 560 U.S. 126, 129–31 (2010); *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 432–33 (1979). The Supreme Court has applied that standard to hearings regarding initial detention. *See Addington*, 441 U.S. at 432–33 (applying clear and convincing standard to initial civil commitment hearing); *United States v. Salerno*, 481 U.S. 739, 751 (1987) (approving initial pretrial detention determination where justified by clear and

notice and an opportunity to be heard and that the opportunity must be meaningful) (*citing to Ying Fong v. Ashcroft*, 317 F. Supp. 2d 398, 403 (S.D.N.Y. 2004)); *Valdez*, 2025 WL 1707737, at *4 (ordering release of petitioner re-detained after an immigration court hearing and concluding "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."); *Lopez v. Sessions*, No. 18-CV-4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) ("Petitioner's re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment."); *Singh v. Andrews*, No. 25-CV-00801, 2025 WL 1918679, at *20 (E.D. Cal. July 11, 2025) (ordering release of noncitizen re-detained after an immigration court hearing based on finding that "the *Mathews* factors show that petitioner is entitled to process, and that process should have been provided before petitioner was detained").

46. Where ICE detains individuals without conducting any individualized assessment as to their immigration status, let alone their flight risk, those individuals merit immediate release from custody. *See Quintero Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (ordering immediate release of individual ICE detained without "any individualized assessment or flight risk assessment" but could not identify any basis under § 1226(a) for his continued detention); *see also Rocano Buestan v. McShane*, No. 25-CV-8544 (JGLC), 2025 WL 3496361, at *1, *6 (S.D.N.Y. Dec. 5, 2025) (same, for noncitizen who had lived in the U.S. approximately 15 years and "was driving around Newburgh with his partner when masked [ICE] officers surrounded them in unmarked vehicles"); *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *5 (S.D.N.Y. July 13, 2025) (ordering release of petitioner re-detained after immigration hearing, finding that her detention "violates her Fifth

convincing standard). Where the Supreme Court has dealt with custody redetermination, it has given no indication that the amount of time an individual had already been confined alters the burden placed on the government. *See Foucha*, 504 U.S. at 71*; Comstock*, 560 U.S. at 126. It is also the overwhelming consensus of judges within the Second Circuit is that the Due Process Clause requires the government to bear the burden of proof by clear and convincing evidence regardless of the length of detention. *See, e.g., Roman v. Decker*, 20-CV-6752 (AJN), 2020 WL 5743522, at *2 (S.D.N.Y. Sept. 25, 2020); *see also Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (collecting cases).

III. Petitioner's Detention under § 1225(b)(2)(A) Violates the INA

48. The detention provisions at § 1226(a) and § 1225(b)(2) were enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-–208, Div. C, §§ 302–03, 110 Stat. 3009-546, 3009–582 to 3009–583, 3009–585. Section 1226(a) was most recently amended by the Laken Riley Act, Pub. L. No. 119-1, 139 Stat. 3 (2025).

49. Following the enactment of the IIRIRA, EOIR drafted new regulations explaining that, in general, people who entered the country without inspection and who were not admitted were not considered detained under § 1225 and were instead detained under § 1226(a). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997) ("1997 Regulation").

50. In the decades that followed, most people who entered without inspection and were placed in standard removal proceedings received bond hearings, unless their criminal history rendered them ineligible for bond pursuant to 8 U.S.C. § 1226(c). That practice was consistent with many more decades of prior practice, in which noncitizens who were not deemed "arriving" were entitled to a custody hearing before an immigration judge or other hearing officer. *See* 8

U.S.C. § 1252(a) (1994); *see also* H.R. Rep. No. 104-469, pt. 1, at 229 (1996) (noting that § 1226(a) simply "restates" the detention authority previously found at § 1252(a)).

A. ICE's Unlawful Expansion of Mandatory Detention Under § 1225(b)(2)(A)

51. On July 8, 2025, ICE, "in coordination with" the Department of Justice ("DOJ"), announced a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.

52. The new policy, entitled "Interim Guidance Regarding Detention Authority for Applicants for Admission,"[5] claims that all persons who present in the United States without having been admitted shall now be subject to mandatory detention provision under § 1225(b)(2)(A). The policy applies regardless of when or where a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

53. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who are present in the United States without admission are subject to detention under § 1225(b)(2)(A) and are ineligible for bond hearings. 29 I&N Dec. at 229.

B. Petitioner's Detention Under § 1225(b)(2)(A) Violates The INA

54. Since the Government adopted its new policy and the BIA issued *Matter of Yajure Hurtado*, hundreds of federal courts, including in this District, have rejected the Government's new interpretation of the INA's detention authorities and *Matter of Yajure Hurtado*. *See, e.g.*, *Covelli-Chaparro v. Bondi*, No. 2:26-CV-118 (NJC), 2026 WL 118842 (E.D.N.Y. Jan. 15, 2026)

[5] *Available at* https://www.aila.org/library/ice-memo-interim-guidance-regarding-detention-authority-for-applications-for-admission.

(granting petition and ordering immediate release from ICE custody); *Crespo Tacuri v. Genalo*, No. 25-CV-06896 (NCM), 2026 WL 35569 (E.D.N.Y. Jan. 6, 2026) (same); *Ulloa Montoya v. Bondi*, No. 25-CV-06363 (JMA), 2025 WL 3718694 (E.D.N.Y. Dec. 23, 2025) (same); *Padilla Molina v. DeLeon*, No. 25-CV-06526 (JMA), 2025 WL 3718728 (E.D.N.Y. Dec. 23, 2025) (same); *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025) (same); *Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (same); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); (same); *see also Sarmiento Guerrero v. Noem*, No. 25-CV-5881 (EK), 2025 WL 3214787, at *6 (E.D.N.Y. Nov. 18, 2025) (granting preliminary injunction, in part, as petitioner was likely to succeed on the merits of his argument he was improperly detained under Section 1225(b)) Only one decision in this District, agrees with the Government's interpretation of § 1225. *See Saamishvili v. Flanagan*, No. 25-CV-6178 (BMC), 2026 WL 377574, at *4 (E.D.N.Y. Feb. 11, 2026). Since *Saamishvili*, judges in this District have responded and declined to follow it. *See, e.g., Peralta Acuapan v. Bondi,* No. 26-CV-00384 (OEM), 2026 WL 507889, at *4 (E.D.N.Y. Feb. 24, 2026) ("The Court also respectfully disagrees with *Saamishvili*, which is, to the Court's knowledge, the only decision in this District that has adopted Respondents' position on the scope of § 1225."); *Mejia-Pina v. Bondi*, No. 2:26-CV-986 (NJC), 2026 WL 482635, at *3 n.4 (E.D.N.Y. Feb. 20, 2026) (same). In addition, multiple judges in the neighboring district have also rejected the Government's interpretation of Section 1225(b).[6] This Court should do the same.

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[6] *See, e.g., Lopez Benitez v. Francis*, 795 F. Supp. 3d 475 (S.D.N.Y. 2025) (DEH); *Tumba v. Francis*, No. 25-CV-8110 (LJL), 2025 WL 3079014, at *3 (S.D.N.Y. Nov. 4, 2025); *Romero v. Francis*, No. 25-CV-8112 (JGK), 2025 WL 3110459, at *2-3 (S.D.N.Y. Nov. 6, 2025); *Cardenas v. Almodovar*, No. 25-CV-9169 (JMF), 2025 WL 3215573, at *2 (S.D.N.Y. Nov. 18, 2025); *Barco Mercado*, 2025 WL 3295903, at *6; *Campbell v. Almodovar*, No. 25-CV-9509 (JLR), 2025 WL

55. The plain text of § 1225(b)(2)(A) confirms that it cannot apply to Petitioner. Section 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" removal proceeding under § 1229a. 8 U.S.C. § 1225(b)(2)(A). "[T]he language of [§ 1225(b)(2)(A)] makes clear that it applies *only* if three criteria are met. The noncitizen must be (i) an 'applicant for admission,' (ii) 'seeking admission,' and (iii) 'not clearly and beyond a doubt entitled to be admitted.'" *Barco Mercado*, 2025 WL 3295903, at *4; *Yao*, 2025 WL 3653433, at *5; *Lopez Benitez*, 795 F. Supp. 3d at 478-88.

56. While Petitioner is an "applicant for admission,"[7] he is not "seeking admission" under § 1225(b)(2)(A). "[T]he phrase 'seeking admission' 'necessarily implies some sort of present-tense action.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)); *J.G.O.*, 2025 WL 3040142, at *3; *Campbell v. Almodovar*, No. 1:25-cv-09509 (JLR), 2025 WL 3538351, at *6 (S.D.N.Y. Dec. 10, 2025); *Lopez Benitez*, 795 F. Supp. 3d at 489; *cf. United States v. Wilson*, 503 U.S. 329, 333 (1992) ("Congress' use of a verb tense is significant in construing statutes."). The INA "defines 'admission' as 'the lawful entry of

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3538351, at *6 (S.D.N.Y. Dec. 10, 2025); *Yao v. Almodovar*, No. 25-CV-9982 (PAE), 2025 WL 3653433, at *3 (S.D.N.Y. Dec. 17, 2025); *but see Chen v. Almodovar*, No. 25-cv-8350 (MKV), 2025 WL 3484855, at *1 (S.D.N.Y. Dec. 4, 2025). Other judges have since responded to and declined to follow *Chen*. *See Goorakani v. Lyons*, No. 25-cv-9456 (DEH), 2025 WL 3632896, at *8-12 (S.D.N.Y. Dec. 15, 2025); *Yao v. Almodovar*, No. 25-cv-9982 (PAE), 2025 WL 3653433, at *8-10 (S.D.N.Y. Dec. 17, 2025); *Yang v. Almodovar*, No. 25-cv-10265 (JPO), 2025 WL 3678644, at *1 (S.D.N.Y. Dec. 18, 2025); *Castro Coneo v. Almodovar*, No. 25-cv-9850 (NSR), 2025 WL 3754079, at *3 n.1 (S.D.N.Y. Dec. 29, 2025).

[7] An "applicant for admission" is defined as "[a]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)." 8 U.S.C. § 1225(a)(1).

the alien into the United States after inspection and authorization by an immigration officer.'" *J.G.O.*, 2025 WL 3040142, at *3 (quoting 8 U.S.C. § 1101(a)(13)(A)). "The requirement that an 'applicant for admission' be 'seeking admission' therefore limits the scope of [§ 1225(b)] to those noncitizens actively seeking 'lawful entry . . . into the United States after inspection and authorization by an immigration officer.'" *Barco Mercado*, 2025 WL 3295903, at *5 (quoting 8 U.S.C. § 1101(a)(13)(A)). Put differently, "'seeking admission' requires an alien to *continue* to want to *go into* the country." *J.G.O.*, 2025 WL 3040142, at *3.

57. The plain text of the statute is buttressed by its "implementing regulations—which were 'promulgated mere months after passage of the statute' and have remained consistent over time." *Lopez Benitez*, 795 F. Supp. 3d at 489 (quoting *Martinez*, 792 F. Supp. 3d at 219). "DHS's own regulations understand an 'applicant seeking admission' to be synonymous with an 'arriving alien.'" *Tumba*, 2025 WL 3079014, at *4. "And an 'arriving alien' is 'an applicant for admission coming or attempting to come into the United States at a port-of-entry.'" *Id.* (quoting 8 C.F.R. § 1001.1).

58. Accordingly, § 1225(b) does not apply to Petitioner because "when DHS agents detained [him] in 2025, he was no longer seeking to enter the country. He was already in — and had been for several years." *Campbell*, 2025 WL 3538351, at *6; *see also J.G.O.*, 2025 WL 3040142, at *3 (Petitioner is not "seeking admission" because "he's already here.").

59. Nor does seeking asylum or other relief from removal mean that Petitioner is "seeking admission." *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *6 n.7; *Garcia-Mendez v. Lynch*, 788 F.3d. 1058 (9th Cir. 2015); *Matter of V-X-*, 26 I&N Dec. 147 (BIA 2013) (finding grant of asylum is not an "admission"); *Matter of Y-N-P,* 26 I&N Dec. 10, 12 (BIA 2012) (finding a grant of cancellation is not an admission, and explaining that "being an "applicant for admission"

under [INA] section 235(a)(1) [8 U.S.C. § 1225(a)(1)] is distinguishable from 'applying . . . for admission to the United States").

60. By holding that § 1225(b)(2)(A) applies to all applicants for admission, *Matter of Yajure Hurtado* reads the "seeking admission" requirement out of the statute. *See Campbell*, 2025 WL 3538351, at *7. If, as the BIA has now concluded and the Government urges, "§ 1225(b)(2)(A) were intended to apply to all 'applicant[s] for admission,' there would be no need to include the phrase 'seeking admission' in the statute." *Lopez Benitez*, 795 F. Supp. 3d at 488. Tellingly, the BIA in *Yajure Hurtado* did not provide any definition of "seeking admission" that would resolve this redundancy. *See* 29 I&N Dec. at 221. This interpretation of § 1225(b)(2)(A) "clearly 'violates the rule against surplusage.'" *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez*, 792 F. Supp. 3d at 218).

61. Looking beyond § 1225(b) to the larger statutory structure, *Matter of Yajure Hurtado*'s holding creates even more surplusage problems when compared with other detention provisions. First, if § 1225(b) "mandated detention for all noncitizens who enter the country illegally, 'then it is not clear under what circumstances [§ 1226(a)'s] authorization of detention on a discretionary basis would ever apply.'" *Barco Mercado*, 2025 WL 3295903, at *6 (quoting *Lopez Benitez*, 795 F. Supp. 3d at 490); *see also Tumba*, 2025 WL 3079014, at *4 ("Respondents' reading of Section 1225 would also all but read Section 1226 off the books").

62. Second, "Respondents' reading of § 1225 would likewise render superfluous the mandatory detention provisions found in" § 1226(c). *Campbell*, 2025 WL 3538351, at *7. "Section 1226(c)(1)(A) mandates detention for 'any [noncitizen] who is inadmissible by reason of having committed an offense covered in section 1182(a)(2) of this title,' such as offenses related to controlled substances. '[T]his mandatory detention under § 1226(c) would be unnecessary if

all persons who have not been admitted into the United States were already subject to § 1225(b)'s mandatory detention provisions.'" *Id.* (citations omitted) (quoting 8 U.S.C. § 1226(c)(1)(A); and *J.U. v. Maldonado*, No. 25-cv-04836 (OEM), 2025 WL 2772765, at *8 (E.D.N.Y. Sept. 29, 2025)).

63. *Matter of Yajure Hurtado* also "render[s] Congress' recent amendment to § 1226(c) redundant." *Barco Mercado*, 2025 WL 3295903, at *7; *Lopez Benitez*, 795 F. Supp. 3d at 489-90; *Tumba*, 2025 WL 3079014, at *4. "When Congress adopts a new law against the backdrop of a 'longstanding administrative construction,' [courts] generally presume[] the new provision should be understood to work in harmony with what has come before." *Monsalvo v. Bondi*, 604 U.S. 712, 725 (2025) (quoting *Haig v. Agee*, 453 U.S. 280, 297-98 (1981)). Passed in January 2025, the Laken Riley Act "makes noncitizens subject to mandatory detention if (1) they are inadmissible under certain provisions of 8 U.S.C. § 1182 and (2) are charged with, arrested for, convicted of, or admit to having committed certain crimes." *Tumba*, 2025 WL 3079014, at *4 (quoting *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025)); *see also* Laken Riley Act, 139 Stat. at 3, *codified at* 8 U.S.C. § 1226(c)(1)(E). "By [the Government's] understanding, all noncitizens inadmissible under 8 U.S.C. § 1182(a)(6) (which states that those like Petitioner who are present without admission are inadmissible) are already subject to mandatory detention." *Tumba*, 2025 WL 3079014, at *4. Simply put, if *Matter of Yajure Hurtado* were correct, "the Laken Riley Act would have been largely unnecessary." *Barco Mercado*, 2025 WL 3295903, at *7; *Campbell*, 2025 WL 3538351, at *7: *Yao*, 2025 WL 3653433, at *7.

64. In addition to traditional statutory interpretation tools, agency "interpretations issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024). Helpfully, "[s]hortly after Congress enacted IIRIRA, [DOJ] issued an

interim rule explaining IIRIRA and how it amended the INA." *Barco Mercado*, 2025 WL 3295903, at *8. "There, the DOJ stated that '[d]espite being applicants for admission, noncitizens who are present without having been admitted or paroled . . . will be eligible for bond and bond redetermination.'" *Id.* (quoting 1997 Regulation). And the Government maintained this position for almost thirty years—until the July 2025 ICE Memo and *Matter of Yajure Hurtado*. Thus, "decades of practice" cuts against the BIA's novel position and supports Petitioner's interpretation and numerous district courts' rulings. *Lopez Benitez*, 795 F. Supp. 3d at 490.

65. Finally, *Matter of Yajure Hurtado* is inconsistent with precedent. In *Jennings v. Rodriguez*, the Supreme Court explained that § 1225 "applies to 'aliens seeking admission into the country,' whereas [§ 1226] applies to 'aliens already in the country pending the outcome of removal proceedings.'" *Barco Mercado*, 2025 WL 3295903, at *9 (quoting *Jennings v. Rodriguez*, 583 U.S. 28, 289 (2018)). "It went on in that same case to repeat that [§ 1226] 'applies to aliens already present in the United States,' like [Petitioner], and 'creates a default rule for those aliens by permitting—*but not requiring*—the Attorney General to issue warrants for their arrest and detention pending removal proceedings.'" *Id.* (quoting *Jennings*, 583 U.S. at 303).

66. Therefore, as hundreds of districts courts have recently concluded, reading the plain text of § 1225(b)(2)(A), employing canons of statutory interpretation, consulting contemporaneous and longstanding agency interpretations of the statute, and applying precedent all lead to a single conclusion: noncitizens who present in the United States without having been admitted and were subsequently arrested inside the United States cannot be subject to mandatory detention under § 1225(b)(2)(A). Petitioner's detention is therefore governed by § 1226(a).

IV. The Proper Remedy is Release

67. The proper remedy for the instant habeas petition is release. *See Rodriguez-Acurio*, 2025 WL 3314420, at *32 ("ICE caused Rodriguez-Acurio to be placed in custody in violation of

her rights to procedural due process. The proper remedy for that unlawful detention is release."); *Covelli-Chaparro,* 2026 WL 118842, at *9 ("As addressed at length in *Rodriguez-Acurio*, upon finding a constitutional violation, a district court 'may' grant a writ of habeas corpus and 'dispose of the matter as law and justice require.' 28 U.S.C §§ 2241(a), 2243. Release from detention is the 'typical remedy' for 'unlawful executive detention'") (quoting *Munaf v. Green*, 553 U.S. 674, 693 (2008); *see also supra* ¶ 46 (citing cases in this District similar to Petitioner's here where courts ordered immediate release).

68. The alternative, a bond hearing, cannot rectify the injury the Government has already done, and is doing now, to Petitioner's Fifth Amendment rights. *Lopez Benitez,* 795 F.Supp.3d at 497 ("[A bond hearing is] no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the decision to strip a person of the freedom that lies at the heart of the Due Process Clause."); *O.F.B.*, 2025 WL 3277677, at *8 ("Here, the nature of the constitutional violation Petitioner sustained—*i.e.*, the government's failure to conduct any kind of individualized assessment before detaining him, failure to make any showing of changed circumstances, and failure to provide him with an opportunity to respond—renders any post-deprivation review by an immigration judge inadequate."); *Campbell*, 2025 WL 3538351, at *13 ("[B]oth DHS's failure to follow its own regulations and its failure to afford Campbell the minimal process due under the Fifth Amendment violated Campbell's due process rights. Because of those failures, Campbell is entitled to release.").

69. Given that DHS has improperly concluded that Petitioner is subject to mandatory detention under Section 1225, rather than discretionary detention under Section 1226(a), DHS failed to conduct any individualized custody determination and offer any due process *before* detaining Petitioner. "The suggestion that" the Government may detain noncitizens "without

consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema,* 2025 WL 1927931, at *3 (ordering habeas relief to noncitizen); *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *2 (E.D.N.Y. Nov. 28, 2025) (ordering habeas relief where noncitizen petitioner's "parole into the United States under Section 1182(d)(5)(A) was premised by law on the determination that she did *not* pose a safety risk. Nothing in the record before this Court shows any change in circumstances. No one at DHS or ICE ever made any individualized determination that Rodriguez-Acurio poses a flight or public safety risk before she was suddenly arrested and detained…."); *O.F.B.*, 2025 WL 3277677 (ordering habeas relief after prior parole and without subsequent changed circumstances or review); *Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (same).

70. Irreparable injury has occurred and will continue to occur if Mr. G.C. is not released. "[A]s a general matter, there is a presumption of irreparable harm when there is an alleged deprivation of constitutional rights." *Donohue v. Mangano,* 886 F. Supp. 2d 126, 150 (E.D.N.Y. 2012) (collecting cases).

71. In addition to the baseline harm of unlawful and arbitrary detention, Mr. G.C.'s mental health will deteriorate.

72. If this Court does not act, Petitioner's detention will continue for months or longer. Only release will remedy the constitutional harms that Mr. G.C. has, and will continue to, suffer.

CAUSES OF ACTION

COUNT I

Violation of the Immigration and Nationality Act
Unlawful Detention Under § 1225(B)(2)

73. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

74. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the United States who are subject to the grounds of inadmissibility. As relevant here, it does not apply to those who previously entered the country and have been residing in the United States prior to being apprehended and placed in removal proceedings by Respondents. Such noncitizens are detained under § 1226(a), unless they are subject to § 1225(b)(1), § 1226(c), or § 1231.

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

76. The appropriate remedy is Petitioner's immediate release.

COUNT II

Violation of the Due Process Clause
Fifth Amendment to the United States Constitution – Procedural Due Process

77. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

78. 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 Clause protects." *Zadvydas*, 533 U.S. at 690.

79. Petitioner has a fundamental interest in liberty and being free from official restraint.

80. The government's detention of Petitioner without a bond determination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

81. More importantly, Respondents' misclassification of which statute Petitioner is detained under fundamentally violated his due process rights. At no time did DHS conduct an individualized assessment of the need for Petitioner's detention. Instead, he was subject to an unlawful arrest by ICE.

82. ICE's failure to conduct an individualized review prior to detention violates due process and necessitates his immediate release.

COUNT III

Violation of the Due Process Clause
Violation of the Fifth Amendment Right to Due Process — Substantive Due Process

83. Petitioner repeats and re-alleges the allegations contained in all preceding paragraphs of this Petition as if fully set forth herein.

84. The Due Process Clause of the Fifth Amendment protects all "person[s]" from deprivation of liberty "without due process of law." U.S. CONST AMEND. V. The only proper purposes for immigration detention are to protect against a risk of flight or danger to the community.

85. Petitioner is not a flight risk nor is he a danger to the community. He has no criminal history, and prior to his ICE arrest, Mr. G.C.'s only contact with law enforcement has consisted of a non-criminal violation for an open container. Respondents' detention of Petitioner is therefore unlawful and unjustified. Accordingly, Petitioner's detention is punitive and he is being detained in violation of his constitutional right to Due Process under the Fifth Amendment.

86. Petitioner's detention without any individualized review of the need for his detention and a lack of consideration of any risk of flight risk or danger violates substantive due process.

COUNT IV

Violation of the Fourth Amendment to the U.S. Constitution – Unlawful Arrest

87. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

88. ICE agents seized Petitioner in violation of his Fourth Amendment rights.

89. An immigration officer is authorized to "briefly detain [a] person for questioning" if they have "a reasonable suspicion, based on specific articulable facts, that *the person being questioned* is, or is attempting to be, engaged in an offense against the United States or is an alien illegally in the United States." 8 CFR § 287.8 (b)(2) (emphasis added); *see United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975) ("For the same reasons that the Fourth Amendment forbids stopping vehicles at random to inquire if they are carrying aliens who are illegally in the country, it also forbids stopping or detaining persons for questioning about their citizenship on less than a reasonable suspicion that they may be aliens."). However, a stop may not be "prolonged beyond 'the time needed to handle the matter for which the stop was made.'" *Millan-Hernandez v. Barr,* 965 F.3d 140, 147 (quoting *Rodriguez v. United States*, 575 U.S. 348, 350 (2015)).

90. Here, ICE ostensibly stopped Petitioner to identify and apprehend their alleged target, not Petitioner. But ICE lacked reasonable suspicion to stop Petitioner and was simply relying on impermissible factors, such as apparent race or ethnicity, language ability, location, or work. Petitioner believes that ICE stopped him because he looks Hispanic. Ex. A., Pet. Decl. ¶ 7. Indeed, while he walking to his home in Brooklyn, Petitioner had done nothing that could

reasonably lead ICE to suspect that he was violating the country's immigration laws. However, even assuming, *arguendo*, that ICE had reasonable suspicion, ICE held Petitioner well after they realized that he was not their target. At that point, ICE could not have had reasonable suspicion about "the person being questioned" and had no authority to continue to hold Petitioner for questioning. 8 C.F.R. § 287.8(b)(2). ICE therefore had no authority under the statute or the Constitution to continue to hold or question him, rendering their actions both *ultra vires* and unconstitutional.

COUNT V

Violation of the APA, 5 U.S.C. §§ 702, 706, and the *Accardi* Doctrine

91. Petitioner repeats, re-alleges, and incorporates by reference each and every allegation in the preceding paragraphs as if fully set forth herein.

92. ICE arbitrarily and capriciously arrested Petitioner without a warrant, absent any probable cause to believe he was in the country illegally or that he would flee and thereby violated agency regulations and the Administrative Procedure Act (APA).

93. Absent a federal warrant, ICE agents have "have more limited authority" and may arrest a noncitizen "only where the alien 'is likely to escape before a warrant can be obtained.'" *Arizona v. United States*, 567 U.S. 387 (2012) (quoting 8 U. S. C. §1357(a)(2)).

94. In 2022, as part of a settlement, ICE issued a nationwide policy that included a set of requirements that are relevant here. *See Castanon Nava v. Dep't of Homeland Sec.*, No. 18-CV-3757, 2025 WL 2842146 (N.D. Ill. Oct. 7, 2025). The policy stated that, to assess the likelihood of escape, ICE officers are "required to consider the totality of the circumstances, including the officer's ability to determine the person's identity; knowledge of that individual's prior escapes or

evasions of immigration authorities; attempted flight from an ICE officer; and the person's ties to the community (such as a family, home, or employment)." *Id.*

95. ICE lacked probable cause that Petitioner was in the country unlawfully for the same reasons that it lacked reasonable suspicion: While he walking to his home in Brooklyn, Petitioner had done nothing that could reasonably lead ICE to suspect that he was violating the country's immigration laws or support probable cause that Petitioner would likely escape before a warrant could be obtained. Prior to his arrest, Petitioner had not made any statements or provided any documentation that could reasonably lead ICE to suspect that he was violating the country's immigration laws. Petitioner also has never been convicted or even charged with committing a crime.

96. All of the relevant factors cut against Petitioner being likely to escape before a warrant could be lawfully obtained. ICE had no reason to believe that Petitioner had previously evaded or fled from immigration authorities. ICE also failed to properly consider the community-ties factors ("family, home, or employment") that weighed in Petitioner's favor. Here, Mr. G.C. has community support, including from his friend and U.S. citizen Mr. Chavez, who is willing to support him should he be released from custody. While in the United States, Mr. G.C has trained in courses related to the construction industry and worked in construction prior to his detention.

97. To the extent that any individualized assessment of Petitioner's likelihood of escape was performed at all, it was clearly erroneous and thus violated the policy.

98. Similarly, Respondents' failure to comply with their nationwide policy constitutes an *Accardi* violation.

99. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel.*

Accardi v. Shaughnessy, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

PRAYER FOR RELIEF

WHEREFORE, the petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Immediately enjoin Respondents from transferring the Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;

c. Declare that the Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment, the Immigration and Nationality Act, the Fourth Amendment, and the Administrative Procedure Act;

d. Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner immediately, returning him to the status of liberty he enjoyed prior to the recent detention, and that he not be re-detained without notice and an opportunity to be heard at a pre-deprivation hearing, where the government will have the burden of showing that his detention is authorized under § 1226(a);

e. In the alternative, this Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

   (1) ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;

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

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

f. If, in the alternative, a bond hearing is afforded before an immigration judge, enjoin Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2);

g. Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 28 U.S.C. § 2412, and on any other basis justified under law; and

h. Grant Petitioner any other relief this Court deems just and proper.

Dated: March 16, 2026
Brooklyn, New York

Respectfully submitted,

/s/ Aaron Miner

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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2026, I caused a copy of the foregoing document to be served via U.S.P.S. certified priority mail/return receipt requested to the following addresses:

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