UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREDY EDUVIEL ARRIAGA HERNANDEZ
Petitioner,

v.

Judith ALMODOVAR, New York Field Office Director for U.S. Immigration and Customs Enforcement; Pamela BONDI, Attorney General of the United States; Kristi NOEM, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner alleges in support of his petition:

PRELIMINARY STATEMENT

1. Petitioner Fredy Eduviel Arriaga Hernandez is in the physical custody of Respondents at the Metropolitan Detention Center (MDC) in the Eastern District of New York. He has been in the United States since 2023.

2. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded he is subject to mandatory detention, without making any requisite prior determination that would overrule their prior determination that the Petitioner was suitable for ROR status. He was arrested January 19, 2026 in Hempstead, New York.

3. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

4. Based on this allegation in Petitioner's removal proceedings, DHS denied Petitioner release from immigration custody, consistent with a new DHS policy issued on July 8, 2025, instructing all Immigration and Customs Enforcement (ICE) employees to consider anyone inadmissible under § 1182(a)(6)(A)(i)—i.e., those who entered the United States without admission or inspection—to be subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

5. Similarly, on September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the

United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

6. Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) does not apply to individuals like Petitioner who previously entered and are now residing in the United States. Instead, such individuals are subject to a different statute, § 1226(a), that allows for release on conditional parole or bond, and requires an individualized determination upon arrest. That statute expressly applies to people who, like Petitioner, are charged as inadmissible for having entered the United States without inspection.

7. Petitioner's confinement is unlawful—as confirmed by a cascade of decisions, including within this District, that have rejected Respondents' interpretation of Section 1225(b)(2). Accordingly, he brings this petition seeking immediate and unconditional release. He also asks this Court to enjoin her transfer outside this District. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order her release.

PARTIES

8. Petitioner FREDY EDUVIEL ARRIAGA HERNANDEZ is alleged to be a citizen of Ecuador who has been in immigration detention since March 10, 2026. Petitioner is unable to

obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

9. Respondent LADEON FRANCIS is named in her official capacity as the Field Office Director for ICE's New York Field Office. She is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.

10. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. She is responsible for the policies and operations of the DOJ.

11. Respondent KRISTI NOEM is named in her official capacity as the Secretary of DHS. She directs each of the component agencies within DHS, including ICE.

12. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

JURISDICTION AND VENUE

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

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

15. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is incarcerated at the Metropolitan Detention Center, within this District; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events

giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

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

17. Exhaustion of administrative remedies in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *Quintanilla v. Decker*, No. 21 Civ. 417 (GBD), 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021) (citing *Joseph v. Decker*, No. 18 Civ. 2640 (RA), 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018)).

18. Such exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question." *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

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

20. On September 5, 2025, the Board decided *Matter of Yajure Hurtado*, a precedential decision finding that all noncitizens who, like Petitioner, have not been admitted to the United States are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). Thus, the BIA will be bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny him release. This is true although the overwhelming majority of district courts in the country that have heard a challenge to this reading

of the statute has rejected it out of hand.

STATEMENT OF FACTS

21. Petitioner has resided in the United States since January 9, 2023 when he entered with his wife and two young children, without inspection.

22. He was detained January 9, 2023, with no prior notice.

23. DHS placed Petitioner in removal proceedings before the immigration court pursuant to 8 U.S.C. § 1229a. ICE has charged Petitioner with, *inter alia*, being inadmissible under 8 U.S.C. § 1182(a)(6)(A)(i) as someone who entered the United States without inspection.

24. There is no reason to believe that ICE has made a prior, individualized determination that he poses a risk of danger or flight, and is instead, detaining Petitioner pursuant to a general policy that anyone in the interior of the United States can be detained without individualized or due process.

25. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request.

26. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody.

LEGAL BACKGROUND

A. Detention Without An Individualized Custody Determination

1. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. See *Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For individuals who are "arriving" in the U.S. or who are subject to expedited removal because they have been present under two years and meet certain other requirements, mandatory detention is authorized by 8 U.S.C. § 1225(b). For

individuals who are in removal proceedings following entry without inspection and who are not subject to mandatory detention based on criminal history, detention is normally authorized by 8 U.S.C. § 1226(a). Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a).

2. Detention serves 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).

3. Beginning in May 2025, the Board of Immigration Appeals and the Department of Justice have promulgated a series of decisions and policies to attempt to reclassify individuals who entered the country without inspect as subject to mandatory detention pursuant to 8 U.S.C. § 1225(b). See Matter of Q. Li, 29 I. & N. Dec. 66, 69 (BIA 2025); Matter of Yajure Furtado, 29 I&N Dec. 216 (BIA 2025). As a result, individuals like Petitioner who entered the U.S. without inspection are now not eligible for bond absent a federal-court order in a habeas case.

4. Respondents' position on their own detention authority contradicts decades of settled precedent, which holds that individuals who entered the U.S. without inspection are governed by 8 U.S.C. § 1226(a). Regulations promulgated nearly thirty years ago provide that "[d]espite being applicants for admission, [noncitizens] who are present without having been admitted or paroled (formerly referred to as [noncitizens] who entered without inspection) will be eligible for bond and bond redetermination" under Section 1226. 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). Until recently, Respondents consistently adhered to this interpretation. See, e.g., Matter of Garcia-Garcia, 25 I&N. Dec. 93 (BIA 2009); Matter of D-J-, 23 I&N. Dec. 572 (A.G. 2003); see also Transcript of Oral Argument at 44:24–45:2, Biden v. Texas, 597 U.S. 785 (2022) (No. 21-954) ([Solicitor General]: "DHS's long-standing interpretation has been that 1226(a) applies to

those who have crossed the border between ports of entry and are shortly thereafter apprehended.").

5. Since this shift, "hundreds of district court decisions have rejected Respondents' expansive interpretation of Section 1225." Molina v. DelLeon, No. 25-CV-06526 (JMA), 2025 WL 3718728, at *3 (E.D.N.Y. Dec. 23, 2025) (collecting cases); Rodriguez v. Bostock, No. 3:25-CV-05240-TMC, 2025 WL 2782499, at *1 (W.D. Wash. Sept. 30, 2025) ("Every district court to address this question has concluded that the government's position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.").

6. In November, a district court in California also held in a series of decisions that DHS's position on bond eligibility is unlawful with respect to "all noncitizens in the United States without lawful status who (1) have entered or will enter the United States without inspection; (2) were not or will not be apprehended upon arrival; and (3) are not or will not be subject to detention under 8 U.S.C. § 1226(c), § 1225(b)(1), or § 1231 at the time the Department of Homeland Security makes an initial custody determination." Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, --- F. Supp. 3d ----, 2025 WL 3288403, at *1 (C.D. Cal. Nov. 25, 2025); see also Maldonado Bautista v. Santacruz, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3713987, at *1, *32 (C.D. Cal. Dec. 18, 2025), judgment entered sub nom. Maldonado Bautista v. Noem, No. 5:25-CV-01873-SSS-BFM, 2025 WL 3678485 (C.D. Cal. Dec. 18, 2025). That judgement should be binding on Respondents nationwide, but instead Respondents have directed immigration judges to ignore the decision. On February 18, the court granted plaintiffs' motion to enforce the judgment and excoriated the government for "far cross[ing] the boundaries of constitutional conduct." Lazaro Maldonado Bautista et al. v. Ernesto Santacruz Jr et al., 5:25-cv-01873-SSS-BFM at *10

(C.D.Cal. February 18, 2026).

7. Respondents' actions in detaining individuals like Petitioner without an individualized custody determination violates the right to due process. 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)). This test requires process sufficient to mitigate the risk of erroneous deprivation of a liberty interest.

8. Numerous courts in this district and others across the country have held that these detentions violate not only the Immigration and Nationality Act but also the due-process clause. See Padilla Molina v. Deleon, No. 25-CV-06526, 2025 WL 3718728, at *5 (E.D.N.Y. Dec. 23, 2025); Hyppolite v. Noem, No. 25-cv-4304, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025); Artiga v. Genalo, No. 25-cv-5208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025); J.U. v. Maldonado, No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); Guerrero v. Noem, No. 25-cv-5881, 2025 WL 3214787 (E.D.N.Y. Nov. 18, 2025)); Lopez Benitez v. Francis, 795 F. Supp. 3D 475, (S.D.N.Y. August 13, 2025); Cuy Comes v. DeLeon, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *5 (S.D.N.Y. Nov. 14, 2025); Valdez v. Joyce, No. 25 CIV. 4627 (GBD), 2025 WL 1707737 at *4 (S.D.N.Y. June 18, 2025).

B. Immigration Detention Framework

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

28. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

29. 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).

30. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

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

32. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C.§ 1226(a)(2)(A)–(B).20.

33. Under the Section 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-CV-5937,2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If, after an individualized consideration, ICE chooses to detain

the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

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

35. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

36. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" Jennings, 583 U.S. at 287-89.

37. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy[1] that rejected well-established understanding of the statutory framework and reversed decades of

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

practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

38. 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 entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

39. Since Respondents adopted their new policy, almost every district court that has confronted this issue "has concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez,* 2025 WL 2782499, at *1 (collecting 22 recent cases finding against the government's interpretation);[2] *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL

[2] *See, e.g., Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz,* 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-CV-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogllo Chafla v. Scott*, 2:25-CV-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025);

2829511 (E.D.N.Y. Oct. 6, 2025) (finding that the government cannot point to an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025) (same).

40. Courts have uniformly rejected DHS's and EOIR's new interpretation because it defies the INA. The government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates rule of surplusage and negates the plain meaning of text.

41. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v.*

Arrazola-Gonzalez v. Noem, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25- CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

Bostock, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after IIRIRA's enactment, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

42. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

43. The LRA amendments to § 1226 that occurred just this year, § 119, 139 Stat. 3, also confirmed widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). Again, if every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision in order to make those individual subject to

mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

44. Petitioner was arrested after more than 2 years of continuous presence in the United States, not while "seeking admission." Further, her pending asylum application is not legally considered a process of "seeking admission." *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6 n.7 (S.D.N.Y. Aug. 13, 2025); *Garcia-Mendez v. Lynch*, 788 F.3d. 1058 (9th Cir. 2015).

45. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. Her detention is governed by § 1226(a), and her continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires.*

Noncitizens' Procedural Due Process Rights

46. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

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

48. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge

constitutional rights." *Velasquez v. Kurzdorfer*, No. 25-CV-493, 2025 WL 1953796, at *14 (W.D.N.Y. Jul. 16, 2025).

49. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

50. In light of a noncitizen's due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and danger to the community. *See Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

51. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal

parolees who required due process protection).

52. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

53. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, No. 25-CV-4627, 2025 WL 1707737, at *4 (S.D.N.Y. Jun. 18, 2025).

54. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, her due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. This is particularly clear where, as is the case here, the government has already made determination that a petition is not a flight risk or a danger, and no change of circumstance justifies re-detention. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the

constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same).

55. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before arresting petitioner at the immigration courthouse. *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

56. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes their decision to forgo any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the U.S.

57. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying her continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020). Although he submits

this is insufficient to vindicate the immense due-process violation inherent in her detention, a bond hearing is a mechanism to mitigate her continued unlawful confinement.

CLAIM I

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION (SUBSTANTIVE DUE PROCESS); ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706

1. Petitioner repeats and incorporates by reference each and every allegation contained in the preceding paragraphs as if fully set forth herein.

2. 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 v. Davis*, 533 U.S. 678, 690 (2001).

3. Petitioner has a fundamental interest in liberty and being free from official restraint. Her detention is not related to any legitimate government interests, in violation of the substantive due process protections of the Fifth Amendment.

CLAIM II

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT OF THE CONSTITUTION (PROCEDURAL DUE PROCESS); ADMINISTRATIVE PROCEDURE ACT 5 U.S.C. §§ 702, 706

4. Petitioner repeats and incorporates by reference each allegation contained in the preceding paragraphs as if fully set forth herein.

5. The procedural due process guarantee of the Fifth Amendment requires that individuals be provided notice and an opportunity to be heard before being deprived of liberty or property interests. *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). "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.

6. The Due Process Clause entitles Petitioner to meaningful process assessing whether her detention is justified. Petitioner's re-arrest and detention without an opportunity to contest her detention in front of a neutral adjudicator after he had been living and going to school in the United States for years provide insufficient process and violates the Due Process Clause of the Fifth Amendment of the Constitution.

CLAIM III

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §§ 702, 706

7. Petitioner realleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

8. Under the Administrative Procedure Act, a court must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law," or that is "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right." 5 U.S.C. § 706(2)(A)-(C).

9. Respondents' re-detention of Petitioner is arbitrary and capricious and in excess of statutory jurisdiction.

10. Respondents failed to articulate a reasoned explanation for their decision in light of all available evidence and failed to consider all the aspects of the problem as well as obvious, less-restrictive alternatives to custody.

11. Respondent's current construction of its detention authority, including the treatment of Petitioner as subject to mandatory detention, violates the INA and therefore the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[3]
3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on her liberty, and enjoining any re-detention for at least seven days after release;
4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within fourteen days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:
    a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
    b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and

[3] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Khalil v. Joyce*, No. 1:25-cv-1935 (JMF) (S.D.N.Y. Mar. 10, 2025), ECF No. 9. *See also* Order, *Ozturk v. Hyde*, No. 25-cv-374 at 68 (WKS) (D.Vt. Apr. 18, 2025), ECF No. 104 (ordering Petitioner's transfer from Louisiana back to Vermont).

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

5. Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and

6. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

KEITH WHITE, PLLC

By___/keith white____

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keith@keithwhitelaw.com

Dated: March 17, 2026
New York, NY

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

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

Respectfully Submitted,

KEITH WHITE, PLLC

By___/keith white____

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Dated: March 17, 2026
New York, NY