UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Alejandro Jovani FLORES SALAZAR,

Petitioner,

v.

Raul MALDONADO JR., Warden, Metropolitan Detention Center; 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. _____

EMERGENCY 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 Alejandro Jovani Flores Salazar is in the physical custody of Respondents at the Metropolitan Detention Center in Brooklyn, New York. He now faces unlawful detention because the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") have concluded that he is subject to mandatory detention.

2. 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).

3. Under DHS policy issued on July 8, 2025, Immigration and Customs Enforcement (ICE) employees must 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.

4. 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.

5. 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.

6. 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 his 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)); *Perez y Perez v. Noem*, 25 Civ. 4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

7. 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 his release.

PARTIES

8. Petitioner is alleged by the government to be a citizen of Mexico who has been in immigration detention since January 28, 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 Raul MALDONADO JR. is named in his official capacity as the Warden of the Metropolitan Detention Center;

10. Respondent Judith ALMODOVAR 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.

11. 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.

12. 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.

13. 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

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

15. The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens 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).

16. 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 in Brooklyn, 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

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

18. 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)).

19. 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).

20. 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.

21. 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 his 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

22. On January 28, 2026, Mr. Flores Salazar was walking on the sidewalk near the Home Depot in Hempstead, NY, on his way to get breakfast before going to look for work. An SUV pulled up alongside the sidewalk and the passenger, who appeared to be white, said one word to Mr. Flores Salazar: "Oscar?" Mr. Flores Salazar said, "No," and continued on his way.

23. Mr. Flores Salazar had only taken a few steps when another SUV came speeding up and stopped directly in front of him, about three feet away, blocking his path. Mr. Flores Salazar was scared because if he had not been paying attention, the SUV could have crashed into him. At the same moment, another SUV arrived, intercepting him and blocking his way. About six officers got out of the SUVs, all wearing military vests and with visible guns. Mr. Flores Salazar did not feel free to leave.

24. One officer showed Mr. Flores Salazar a piece of paper with a picture of a man who appeared to be Latino, with the name Oscar written underneath. He asked Mr. Flores Salazar in Spanish, "Do you know this person?" At that moment, armed officers surrounded Mr. Flores Salazar. He answered, "I don't know him" in Spanish.

25. The officers continued speaking to Mr. Flores Salazar in Spanish, asking his name, which he provided, and if Mr. Flores Salazar had any identification; he said he did not.

The officers told Mr. Flores Salazar that he had to go with them. An officer handcuffed him, searched his pockets and belongings, and put him in a van.

26. The officers – who did not identify themselves or who they worked for – took Mr. Flores Salazar to an office and handcuffed his feet and arms and put a chain around his waist. They later took Mr. Flores Salazar to another office, but Mr. Flores Salazar had to wait in a van for about five hours before being processed by ICE. He was never advised of his rights. Petitioner is now detained at the Metropolitan Detention Center in Brooklyn, New York.

27. DHS placed Petitioner in removal proceedings before the Varick Street Immigration Court in New York, 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. His next Master Calendar Hearing is March 31, 2026 at the Varick Street Immigration Court. Through his immigration attorney, Steven Muñoz, he has filed a Motion to Suppress and Terminate Removal Proceedings based upon illegally obtained evidence and the failure of DHS to meet their burden to prove alienage. That Motion is currently pending before the Court.

28. Before his warrantless arrest on January 28, 2026, Petitioner had no contact with immigration personnel or authorities. He has many years of ties to the community on Long Island where he lived, and has a consistent work history. He has an infant son born in the United States, and many family members in the United States as well. Petitioner has no criminal convictions, and only one criminal arrest -- for possession of a small amount of a controlled substance. This arrest, a misdemeanor, along with two bicycle violations charged on the same date, resulted in the entry of an adjournment in contemplation of dismissal (ACD) with the prosecutor's consent. Petitioner is neither a flight risk nor a danger to the community.

29. Pursuant to *Matter of Yajure Hurtado*, the immigration judge is unable to consider Petitioner's bond request. As a result, Petitioner remains in detention. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL BACKGROUND

Immigration Detention Framework

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

31. 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).

32. 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).

33. 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).

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

35. 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.

36. 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.

37. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S.281, 289 (2018) (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.

38. 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).

39. 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.

40. 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 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.

41. 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.

42. 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." *Vazquez v. Bostick,* 802 F. Supp. 3d 1297 (W.D. Wash. 2025) (collecting, at *4, n. 3,

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

22 recent cases finding against the government's interpretation); *see also Hyppolite v. Noem*, No. 25-CV-4304 (NRM), 2025 WL 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).

43. Indeed, the overwhelming majority of district courts in the Second Circuit have held that Respondents' interpretation of the mandatory detention statutes is wrong and have ordered petitioners' immediate release. *See, e.g.*, *Flores-Linares v. Bondi*, No. 26 Civ. 298 (SJB), 2026 WL 179208, at *5 (E.D.N.Y. Jan. 22, 2026) ("Court after court, judge after judge, in district after district has rejected this argument."); *Crespo Tacuri v. Genalo*, No. 25 Civ. 6896 (NCM), 2026 WL 35569, at *3 (E.D.N.Y. Jan. 6, 2026) ("The judges that have considered this issue within the Eastern District of New York in the last four months have unanimously rejected the government's interpretation."); *Padilla Molina v. Deleon*, No. 25 Civ. 6526 (JMA), 2025 WL 3718728, at *3 (E.D.N.Y. Dec. 23, 2025) ("[T]he Court joins the hundreds of district court decisions that have rejected Respondents' expansive interpretation of Section 1225 as inconsistent with the plain text and overall structure of the INA.") (citations omitted).[2]

[2] *See also e.g.*, *Singh v. Maldonado*, No. 26 Civ. 119 (OEM), 2026 WL 233216, at *8, *10 (E.D.N.Y. Jan. 29, 2026); *Minarcaja Concha v. Lyons*, No. 2:25 Civ. 6695 (NJC), 2025 WL 215417, at *13, *19 (E.D.N.Y. Jan. 28, 2026); *Covelli-Chaparro v. Bondi*, No. 2:26 Civ. 118 (NJC), 2026 WL 118842, at *6-7 (E.D.N.Y. Jan. 15, 2026); *I za by Iza v. Larocco*, No. 2:25 Civ. 6915 (NJC), 2026 WL 31378, at *13, *16 (E.D.N.Y. Jan. 5, 2026); *Galeas Miranda v. Maldonado*, No. 25 Civ. 6882 (PKC), 2026 WL 25405, at *2, *2 n.1 (E.D.N.Y. Jan. 5, 2026); *Arizmendi v. Noem*, No. 25 Civ. 7056 (NRM), 2025 WL 3723960, at *1–2 (E.D.N.Y. Dec. 24, 2025); *Padilla Molina v. DeLeon*, No. 25 Civ. 06526 (JMA), 2025 WL 3718728, at *2– 5 (E.D.N.Y. Dec. 23, 2025); *Ulloa Montoya v. Bondi*, No. 25 Civ. 06363, 2025 WL 3718694, at *3–6 (E.D.N.Y. Dec. 23, 2025) (JMA); *Pesantez Castro v. Maldonado*, No. 25 Civ. 06844, 2025 WL 3723966, at *1–2 (E.D.N.Y. Dec. 23, 2025) (JMA); *Y- C- v. Genalo*, No. 25 Civ. 06558 (NCM), 2025 WL 3653496, at *3–5, *8 (E.D.N.Y. Dec. 17, 2025); *Ye v. Maldonado*, No. 25 Civ. 06417 (AMD), 2025 WL 3521298, at *3–6, *9 (E.D.N.Y. Dec. 8, 2025); *Rodriguez-Acurio v. Almodovar*, No. 2:25 Civ. 6065 (NJC), 2025 WL 3314420, at *21, *33 (E.D.N.Y. Nov. 28, 2025); *O.F.B. v. Maldonado*, No. 25 Civ. 6336, 2025 WL 3277677 (HG), at *3–5, *8 (E.D.N.Y. Nov. 25, 2025); *Sarmiento Guerrero*

44. This virtually universal consensus reflects the depth of Respondents' misreading of the INA and of their disregard for the constitutional and statutory rights of noncitizens in the United States.

45. 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.

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v. Noem, No. 25 Civ. 05881 (EK), 2025 WL 3214787, at *3–7 (E.D.N.Y. Nov. 18, 2025); *Hyppolite v. Noem*, No. 25 Civ. 4304 (NRM), 2025 WL 2829511, at *7–12, *16 (E.D.N.Y. Oct. 6, 2025); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *4–9 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, No. 25-CV-04836 (OEM), 2025 WL 2772765, at *4–10 (E.D.N.Y. Sept. 29, 2025); *see also, e.g.*, *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–91, 499 (S.D.N.Y. 2025); *Yao v. Almodovar*, No. 25 Civ. 9982 (PAE), 2025 WL 3653433, at *4–10, *12 (S.D.N.Y. Dec. 17, 2025); *Barco Mercado v. Francis*, No. 25 Civ. 6582 (LAK), 2025 WL 3295903, at *4, *13 (S.D.N.Y. Nov. 26, 2025) (noting that the issue of whether all noncitizens who entered the United States without authorization "*must be detained* until their removal proceedings are completed [] has been challenged in at least 362 cases in federal district courts," and "[t]he challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States").

46. 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. 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).

47. 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).

48. 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.

49. 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. His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires.*

Noncitizens' Procedural Due Process Rights

50. 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).

51. 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)).

52. 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).

53. 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).

54. 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).

55. 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).

56. 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.*

57. 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).

58. 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, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *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 v. Francis,* (S.D.N.Y. July 13, 2025) (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).

59. 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 either before or after his summary arrest while walking in front of Home Depot. *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).

60. 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.

61. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the

writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (ordering release where detention became unlawful once condition release date had passed); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.") (citation omitted).

62. No procedural alternative to release can serve as an effective remedy. *See, e.g., Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC), 2025 WL 3314420, at *31 (E.D.N.Y. Nov. 28, 2025) (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out."); *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *8-9 (S.D.N.Y. Nov. 4, 2025) (ordering release); *Hyppolite*, 2025 WL 2829511, at *16 (same). Petitioner's detention was unlawful from the moment he was detained and then taken into custody. Respondents afforded him no process before detention and have baselessly asserted authority to subject him to mandatory detention. Their violation is particularly egregious given that they previously released him on a finding that he presented neither a danger nor a flight risk. Immediate release is the appropriate remedy.

63. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying his 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 his race-based detention, a bond hearing is a mechanism to mitigate his continued unlawful confinement.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) AND IMPLEMENTING REGULATIONS

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

65. Because Petitioner is not "seeking admission," he] is not lawfully detained under 8 U.S.C. § 1225(b)(2) and his detention pursuant to that statute is *ultra vires* and not lawful.

66. Rather, the proper statutory interpretation of the INA, consistent with decades of practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a).

SECOND CAUSE OF ACTION:

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND THE IMMIGRATION AND NATIONALITY ACT U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)

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

68. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether or not to detain him. However, because ICE arrested and detained Petitioner under 8 U.S.C. § 1225(b)(2), the agency necessarily failed to exercise its discretion.

69. By refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due under the discretionary detention statute, violating both the statute itself and the Due Process Clause of the Constitution.

THIRD CAUSE OF ACTION:

VIOLATION OF THE FOURTH AMENDMENT TO THE CONSTITUTION
(Freedom from Unlawful Stop and Seizure)

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

71. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . . the persons or things to be seized." U.S. Const. amend. IV.

72. Except at the border and its functional equivalents, the Fourth Amendment prohibits Respondents from conducting a detentive stop to question a person without reasonable suspicion that a person is a noncitizen unlawfully in the United States. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975). The Government bears the burden of providing "specific and articulable facts" to support reasonable suspicion. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). The race of an individual cannot itself create reasonable suspicion, even for a temporary stop. *United States v. Brignoni-Ponce*, 422 U.S. 873, 887 (1975); *Noem v. Vasquez Perdomo*, No. 25A169, --- S.Ct. ----, 2025 WL 2585637, at *3 (Sep. 8, 2025) (Kavanaugh, J., concurring). Officers lacked reasonable suspicion to even approach Petitioner, and certainly lacked probable cause to arrest him.

73. "[T]o establish reasonable suspicion, an officer cannot rely solely on generalizations that, if accepted, would cast suspicion on large segments of the law-abiding population." *United States v. Manzo-Jurado*, 457 F.3d 928, 935 (9th Cir. 2006); *see also Noem v. Vasquez Perdomo*, 606 U.S. __ (2025), 2025 WL 2585637, at *3 (Kavanaugh, J., concurring) ("To be clear, apparent ethnicity alone cannot furnish reasonable suspicion[.]").

74. Petitioner's detention had no basis to stop, search and detain petitioner apart from his race. Rather, his detention was part of a coordinated, indiscriminate sweep of individuals who appeared to be of Hispanic descent in certain communities of New York. Hispanic individuals are stopped, detained, questioned, and in some cases threatened based solely on their race.

75. Petitioner's detention violates the Fourth Amendment because he was arrested without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855, 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner's Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination before re-arresting and detaining noncitizen in removal proceedings).

76. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado v. Figueroa,* No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025)(ordering habeas petitioner's "release from detention . . . granted because her Fourth Amendment rights were violated.").

FOURTH CAUSE OF ACTION:

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a), AND IMPLEMENTING REGULATIONS

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

78. Upon information and belief, Respondents are currently detaining Petitioner pursuant to 8 U.S.C. § 1225(b)(2), its mandatory detention authority.

79. However, Petitioner was, at the time of his arrest and detention by Respondents, not seeking admission to the United States. He was already residing in the United States. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

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

FIFTH CAUSE OF ACTION:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

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

82. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2)(A).

83. ICE officers' authority to conduct warrantless arrests is prescribed in 8 U.S.C. 1357(a)(2). That statute requires that officers have "reason to believe" a person is in the U.S. in violation of laws *and* "is likely to escape before a warrant can be obtained for his arrest." That assessment must be individualized.

84. On information and belief, no individualized assessment of flight risk was conducted for petitioner and Respondents did not have probable cause to believe he was likely to escape before a warrant could be obtained.

85. Instead, his detention was part of an operation to stop, question and detain Hispanic New Yorkers based solely on their race and presence in certain neighborhoods of New York.┼ Respondents' policy and practice of making warrantless arrests without the required individualized flight risk analysis is "final agency action" that violates the Administrative Procedure Act. *See Escobar Molina,* 2025 WL 3465518, at *2 ("enjoin[ing] preliminarily defendants from continuing any policy or practice of conducting warrantless civil immigration arrests in the District without making individualized probable cause determinations as to each arrestee's risk of escape, as required by 8 U.S.C. § 1357(a)(2)"). The appropriate remedy is release. *See also Orellana v. Nobles Cnty.*, 230 F. Supp. 3d 934, 945 (D. Minn. 2017) ("because no warrant was issued for Orellana's arrest, Orellana's arrest and continued detention is lawful only if officers acted within their statutory authority for affecting a warrantless arrest [under] Section 1357" and "[t]here is [] no evidence that ICE or any other immigration officer had probable cause to believe that Orellana was 'likely to escape before a warrant can be obtained for his arrest,' the second half of what is needed before a warrantless arrest under § 1357(a)(2) is lawful").

86. An action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

87. Respondents' decision to detain Petitioner and suddenly subject him to mandatory detention under Section 1225(b)(2) as a result of their indiscriminate stop operation, irrespective Petitioner's individual circumstances, is arbitrary and capricious and contrary to law.

88. Respondents' campaign of race-based stops of New Yorkers who appear to be Hispanic is also arbitrary and capricious; contrary to law; and unconstitutional.

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] *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)). *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).

3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his 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

   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,

Dated: March 17, 2026
New York, NY

/s/
Beverly Van Ness

Pro Bono Counsel for Petitioner

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

I, Beverly Van Ness, am submitting this verification on behalf of the Petitioner as an attorney for Petitioner. I, or Petitioner's removal defense attorney, have discussed with the Petitioner the events described in the Petition. Based on those discussions, and in consultation with his removal attorney, 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.

Dated: March 17, 2026
New York, NY

/s/
Beverly Van Ness