UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

F.A.R.,

Petitioner,

v.

KENNETH GENALO, *in his official capacity as* Field Office Director of New York, Immigration and Customs Enforcement; RAUL MALONADO Jr., *in his official capacity as* Warden of the Metropolitan Detention Center; 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-cv-1663

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner F.A.R.[1] fled Honduras to seek asylum in the United States and has lived in the United States since 2013. He entered the United States as an unaccompanied minor (*i.e.,* an unaccompanied alien child ("UAC")) and was encountered and detained by immigration officials. He was issued a Notice to Appear ("NTA") placing him in removal proceedings, and transferred to the custody of the Office of Refugee Resettlement ("ORR") due to his UAC status. A few weeks later, he was released to his mother in Virginia pursuant to a Sponsorship Agreement.

2. On August 28, 2025, Immigration and Customs Enforcement ("ICE") arrested Mr. A.R. while he was reporting for a required probation appointment. ICE initially detained Mr. A.R. for several days at Orange County Jail in Goshen, New York, before transferring him to the

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

Metropolitan Detention Center ("MDC") in Brooklyn, New York, where he is currently detained. Respondents have now erroneously subjected Mr. A.R. to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) for over six months. Respondents are unlawfully detaining Petitioner in violation of his statutory and constitutional rights.

3. Before his ICE arrest, Petitioner lived with his partner and his young U.S. citizen son in Monticello, New York. Petitioner has four U.S. citizen children whom he financially supports. Due to Respondents' unlawful actions, however, he is separated from his family and is suffering at MDC, a federal jail plagued with inhumane conditions, including lack of access to medical care and rampant violence.

4. 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.

5. 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, in over a decade in the United States, Mr. A.R. has been arrested only once nearly four years ago and was compliant with probation prior to his sudden arrest by ICE. Nor did Respondents abide by the statutory requirement under the Trafficking Victims Protection Reauthorization Act of 2008,

Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 ("TVPRA") to conduct an assessment of the "least restrictive [custodial] setting" upon detaining Petitioner, classified as a UAC. *See* 8 U.S.C. § 1232(c)(2)(B).

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

JURISDICTION AND VENUE

7. 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).

8. 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.

9. 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 Petitioner 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

10. 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.*

11. 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).

PARTIES

12. Petitioner F.A.R. is a 29-year-old national of Honduras who has lived in the United States since 2013 when he arrived as a seventeen-year-old. ICE arrested him on August 28, 2025 and are detaining him at MDC.

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 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.

15. 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.

16. 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.

17. 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.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

18. 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).

19. 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).

20. 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).

STATEMENT OF FACTS

I. Petitioner Flees to Seek Protection in the United States

21. Mr. A.R. is a 29-year-old citizen of Honduras who has been living in the United States since October 2013. Ex. A, Pet's Decl. ¶ 3. He fled Honduras at the age of seventeen after his family was targeted and several members on his father's side were murdered. *Id.* ¶ 2.

22. Mr. A.R. entered the United States by crossing the U.S.-Mexico border on foot as an unaccompanied minor. *Id.* ¶ 3. After he entered, he encountered immigration officers and was designated a UAC. *Id.*

23. On October 4, 2013, he was issued a Notice to Appear ("NTA") alleging entry to the United States without admission or parole, and he was placed in removal proceedings. Ex. B, NTA dated 2013. He was transferred to ORR custody and detained at the Southwest Key Casa Esperanza, an ORR children's facility in Brownsville, Texas. Ex. C, Form I-286; *see also* Pet's Decl. ¶ 3; Ex. B, NTA; Ex. D, ORR Release Forms. A few weeks later, on October 30, 2013, he was released pursuant to a Sponsorship Agreement to his mother who lived in [redacted]. Ex. D, ORR Release Forms; Pet's Decl. ¶¶ 3-4. In about May 2014, he moved to live with his aunt who lived in [redacted] and notified the immigration court. Pet's Decl. ¶ 4; Ex. E, Motion to Change Venue to New York. He has lived in New York for over a decade. Pet's Decl. ¶ 4.

24. Mr. A.R. was arrested for the first and only time in June 2022 and charged with VTL 1192.02, driving while under the influence. He pleaded guilty and was sentenced to three years probation. Since his arrest, Mr. A.R. no longer drinks alcohol, completed an alcohol substance use program, and complied with probation. *Id.* ¶ 9.

II. Petitioner's Arrest and Detention by ICE

25. Prior to his current detention, Mr. A.R. attended non-detained immigration court at 26 Federal Plaza Immigration Court from approximately 2014 to 2021. *Id.* ¶ 6. Through prior immigration counsel, Mr. A.R. filed a Form I-589 Application for Asylum with U.S. Citizenship and Immigration Services ("USCIS") in February 2017. USCIS denied his application and referred it to the immigration court, which held a hearing on the merits of his application on September 9, 2021.

26. The immigration judge ("IJ") denied Mr. A.R.'s asylum application, and he timely appealed. The appeal was pending with the Board of Immigration Appeals ("BIA") when ICE arrested and detained Mr. A.R. on August 28, 2025.

27. On August 28, 2025, Mr. A.R. reported for an appointment with his probation officer. Pet's Decl. ¶ 10. When he arrived, there were several ICE officers there, who told Mr. A.R. that he had to go with them, and he complied with the officers' order. *Id.* ¶ 11. The officers brought Mr. A.R. to an ICE office in Newburgh, New York, where he was fingerprinted. *Id.* ¶ 12.

28. While detained at the ICE office, ICE did not provide Mr. A.R. with any information regarding why he was re-detained. *Id.* ¶ 11. After a few hours, they transferred him to Orange County Jail. *Id.* ¶ 12. A few days later, on September 2, 2025, Mr. A.R. was transferred to MDC, where he has been detained since. *Id.* ¶ 14.

29. On October 8, 2025, the BIA remanded Mr. A.R.'s case back to the immigration court to consider Mr. A.R.'s eligibility for voluntary departure.

30. Counsel from Brooklyn Defender Services entered her appearance as *pro bono* counsel for Mr. A.R. on January 20, 2026 after his prior immigration counsel withdrew. Upon review of the record, BDS immigration counsel discovered numerous errors by Mr. A.R.'s prior counsel and raised the issue of ineffective assistance of counsel before the immigration court. The

IJ permitted Mr. A.R. to proceed under *Matter of Lozada*, 19 I. & N. Dec. 637 (B.I.A.1988)[2] in formally filing a complaint against his prior attorney. In addition, at a subsequent immigration hearing, on March 4, 2026, the IJ permitted BDS immigration counsel to pursue all applications that Mr. A.R. is eligible for before the immigration court due to the prior ineffective assistance of counsel.

31. Due to his prior hospitalizations, history of migraines, and memory issues BDS immigration counsel requested a hearing to assess Mr. A.R.'s competency to meaningfully participate in his immigration proceedings. *See Matter of M-A-M-*, 25 I. & N. Dec. 474 (B.I.A. 2011). The immigration court scheduled Mr. A.R. for a competency hearing on April 1, 2025.

III. Petitioner Suffers Declining Physical and Mental Health While in ICE Custody

32. Mr. A.R. is suffering while detained. For over six months, he has been separated from his four U.S. citizen children, who depend on him emotionally and financially. Pet's Decl. ¶¶ 15-16. He feels isolated and helpless knowing that his children are struggling without him and that he cannot do anything to help them. *Id.* ¶ 16.

33. Mr. A.R. suffers from migraines and has had difficulty obtaining medicine consistently while at MDC. *Id.* ¶ 17. The stress related to not knowing whether he will be released and able to reunite with his family adds to the throbbing feeling in his head that Mr. A.R. experiences when unable to take medicine. *Id.*

[2] Setting forth the procedural requirements to make out a claim of ineffective assistance of counsel in removal proceedings.

LEGAL FRAMEWORK

I. Immigration Detention Framework

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

35. 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).

36. 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).

37. 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

38. "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.

39. 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).

40. 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.

41. This test requires a process sufficient to mitigate the risk of erroneous deprivation of Petitioner's liberty interest. Revocation of release from confinement, even civil immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole, probation, and freedom from civil immigration confinement. *See Valdez v. Joyce*, No. 25-cv-4627 (GBD), 2025 WL 1707737, at *3 (S.D.N.Y. June 18, 2025) (finding immigration petitioner's "liberty interest is clearly established"); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying case law from the probation and parole contexts to conclude that the non-citizen petitioner had a "liberty interest in remaining out of [immigration] custody"); *R.A.R.R. v. Almodovar*, No. 25-cv-6597 (PKC), 2026 WL 323040, at

*8 (E.D.N.Y. Feb. 6, 2026) (procedural due process rights attach to UACs released from ORR detention pursuant to the TVPRA).

42. 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 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").

43. 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 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").

44. 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 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 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. Protections for Unaccompanied Minors

45. Immigration law, as amended by the Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235(d), 122 Stat. 5044 ("TVPRA"), provides special protections for noncitizens who enter the United States as unaccompanied minors. An unaccompanied alien child ("UAC"), or unaccompanied minor, is a child who: "(A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody." 6 U.S.C. § 279(g)(2).

46. Recognizing the particular vulnerability of children arriving at the border, Congress required that UACs be treated differently than other noncitizens entering the United States without lawful status. The TVPRA provides that children under the age of 18 that come to the United States be transferred to the custody of ORR. *See* 6 U.S.C. § 279 (transferring certain immigration functions concerning minor children to ORR); 8 U.S.C. § 1232(b) (making ORR responsible for "the care and custody of all [UACs], including responsibility for their detention" and requiring transfer of such children to ORR custody).

47. Any unaccompanied minor is offered further statutory protections during immigration proceedings. Pursuant to the TVPRA, ORR is under an obligation to ensure that UACs in its custody are "promptly placed in the least restrictive setting that is in the best interest of the child" taking into consideration danger to self, community, and flight risk pending the completion of removal proceedings. 8 U.S.C. § 1232(c)(2)(A). Placement of children into "secure facilities," which are "akin to a local juvenile hall," *Saravia v. Sessions*, 280 F. Supp. 3d 1168,

1178 (N.D. Cal. 2017), is reserved for "children who have been determined to pose a danger to self or others or have been charged with crimes." *Lopez*, 2018 WL 2932726 at *5. Likewise, UACs are further protected under a court settlement entered into by the United States government, known as the 1997 *Flores* Settlement.[3]

48. The TVPRA prohibits UACs from being released on their own recognizance. *See* 6 U.S.C. § 279(b)(2)(B) (ORR "shall not release such children upon their own recognizance"). ORR retains "responsibility" for "the care and custody of all unaccompanied alien children" (subject to threshold exclusions inapplicable here), regardless of their physical placement. 8 U.S.C. § 1232(b)(1). "ORR makes all placement decisions involving UACs to ensure they are not released on their own recognizance." *Lopez*, 2018 WL 2932726, at *6 (citing 6 U.S.C. § 279(b)(1)(C), (D), (b)(2)). As mandated by the relevant government regulations, ORR offers post-release services for certain UACs no longer in its physical custody. 45 C.F.R. § 410.1210(b).

49. While the TVPRA Section 1232(c)(2)(A) protects children under the age of 18 and in ORR custody, Section 1232(c)(2)(B) protects that same vulnerable population when the minor "reaches 18 years of age and is transferred to the custody" of DHS. *See* 8 U.S.C. § 1232(c)(2)(B). With respect to those children, DHS "*shall consider placement in the least restrictive setting* available after taking into account the [UAC's] danger to self, danger to the community, and risk of flight." *See id.* (emphasis added). "The protections of Section 1232(c)(2)(B) . . . extend beyond those over whom the [ORR] exercises physical custody; they apply to UACs who turn eighteen

[3] *Flores* Settlement at ¶ 24A ("A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing."); *see also Lopez*, 2018 WL 2932726 at *5 (the *Flores* Settlement requires that "[u]pon taking a minor into custody" the government "shall make and record the prompt and continuous efforts on its part toward family reunification and release of the minor").

while in the legal custody of the [ORR] and on release pursuant to sponsorship agreements." *Lopez*, 2018 WL 2932726, at *9); *see also Garcia Ramirez v. ICE*, No. 18-CV-508, 2025 WL 3563183, at *16 (D.D.C. Dec. 12, 2025) ("ICE cannot re-arrest and detain without affording age-outs the protection due under Section 1232(c)(2)(B) merely because some short time has passed since that protection was afforded."); *R.A.R.R. v. Almodovar*, No. 25-cv-6597 (PKC), 2026 WL 323040, at *6-7 (E.D.N.Y. Feb. 6, 2026) (agreeing with *Lopez* and *Garcia Ramirez*).[4] Moreover, Section 1232(c)(2)(B) "evidenc[es] congressional intent to repeal, in part, 8 C.F.R. § 1003.19 (mandatory detention of arriving aliens)" with respect to UACs who have reached the age of 18. *See Lopez,* 2018 WL 2932726 at *5.

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

50. 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).

51. 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").

---

[4] *But see Mendez Ramirez v. Decker*, 612 F. Supp. 3d 200, 210–11 (S.D.N.Y. 2020) (concluding that petitioner had lost his UAC status because he had been released to the custody of a parent and thus no longer met the statute's definition of "*unaccompanied* alien child."); *Jose L.P. v. Whitaker*, 431 F. Supp. 3d 540, 549–50 (D.N.J. 2019) (same).

52. 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)

53. 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.

54. 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.

55. 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.

---

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

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

56. 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) (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.

57. 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.

58. 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

---

[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 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).

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 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.

59. 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).

60. 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.").

61. 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").

62. 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).

63. 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").

64. 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)).

65. *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.

66. 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.

67. 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).

68. 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).

V. DHS Must Consider Placing Petitioner in the "Least Restrictive Setting" Upon Re-Detention

69. Upon entering the United States, Petitioner was designated as a UAC, and transferred into the custody of ORR. ORR, following the requirements of the TVPRA and the *Flores* Settlement, released Petitioner to his mother under a Sponsorship Agreement. In not keeping Petitioner in an ORR secure facility and determining he could be released to his sponsor, ORR made a "least restrictive setting" determination at the time of Petitioner's release from detention and concluded that he was not a flight risk and would not be a danger to himself or the community. *See* 8 U.S.C. § 1232(c)(2)(A).

70. Petitioner moved to New York to live with his aunt around May 2014 and notified the immigration court as required under the Sponsorship Agreement. Petitioner turned 18 while still in the custody of ORR. However, when he was arrested by ICE officers in August 28, 2025, the officers failed to make a determination under Section 1232(c)(2)(B), which requires DHS to consider and make a determination of the "least restrictive setting" in which to place him. Instead, ICE placed him at the Orange County Correctional Facility and then MDC—in jail-like facilities detained alongside people in pre-trial criminal detention—arguably the *most restrictive* setting available.

71. Section 1232(c)(2)(B) applies to minors who "reach[] 18 years of age" and "[are] transferred into the custody of the Secretary of Homeland Security." 8 U.S.C. § 1232(c)(2)(B). In *Lopez*, the court was directly confronted with the question of whether a UAC released pursuant to

a Sponsorship Agreement was still within the "custody" of ORR such that upon his arrest by ICE following his 18th birthday, he would be entitled to the protections of Section 1232(c)(2)(B). *See id.* at *8. The court determined that while the minor was released to his mother, he was still within the custody of ORR pursuant to the still valid Sponsorship Agreement, which meant that upon his arrest by ICE he should have been afforded the protections required by Section 1232(c)(2)(B). *See id.* at *9-10.

72. Here, much like the petitioner in *Lopez*, Petitioner is entitled to the protections of Section 1232(c)(2)(B). Recently, *in R.A.R.R. v. Almodovar*, Judge Chen applied *Lopez*, 2018 WL 2932726, at *12, and found that Respondents violated the TVPRA and the APA by failing to follow the procedures mandated by Section 1232(c)(2)(B):

> "The Court therefore finds that although ORR relinquished *physical* custody of Petitioner upon his release to his ORR-vetted and approved sponsor, ORR retained *legal* custody of Petitioner throughout his sponsored release. Petitioner was thus in ORR legal custody up until the day he was re-detained by ICE, at which point Petitioner's custody was effectively transferred from ORR to ICE, which triggered the requirement under Section 1232(c)(2)(B) that ICE conduct an assessment of the 'least restrictive [custodial] setting' for Petitioner."

R.A.R.R., 2026 WL 323040, at *6 (quoting 8 U.S.C. § 1232(c)(2)(B)).

73. Each day Petitioner is held by DHS without a determination that a jail-like facility is the appropriate place for him, is a serious encroachment on his statutory rights, freedom and individual liberties. The actions DHS has taken are both contrary to statutory requirements and congressional intent.

VI. The Proper Remedy is Release

74. 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* ¶ 56 (citing cases in this District similar to Petitioner's here where courts ordered immediate release).

75. 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.").

76. 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); *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).

77. Irreparable injury has occurred and will continue to occur if Mr. A.R. 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).

78. In addition to the baseline harm of unlawful and arbitrary detention, F.A.R.'s mental health will deteriorate. He will also be unable to provide for his children, as he is their primary breadwinner, a source of emotional support, and a stable parental figure.

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

VII. In the Alternative, Petitioner's Prolonged Mandatory Detention Requires a Bond Hearing Before a Neutral Arbiter Where the Government Bears the Burden

80. If this Court, does not order Petitioner's immediate release under Counts I-IV, this Court should, in the alternative, order that Petitioner's mandatory detention under 8 U.S.C. § 1225(b) is unconstitutionally prolonged and order an individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered, and at which necessary procedural safeguards are put in place as reasonable accommodations to ensure that Petitioner can meaningfully participate in the proceeding.

81. Petitioner's mandatory prolonged detention under 8 U.S.C. § 1225(b) violates the Fifth Amendment. *See, e.g.*, *Al-Thuraya*, 2025 WL 2858422, at *6; *Walizada v. Trump*, No. 25-CV-768, 2025 WL 3551972, at *16-17 (D. Vt. Dec. 11, 2025).[8]

82. "[T]he Due Process Clause covers noncitizens, whether their presence here is lawful, unlawful, temporary, or permanent." *Velasco Lopez*, 978 F.3d at 850 (citing *Zadvydas*, 533 U.S. at 693. Consistent with this bedrock principle, both the Supreme Court and the Second Circuit have made clear that indefinite immigration detention without a bond hearing is constitutionally problematic. *See Zadvydas*, 533 U.S. at 690 ("A statute permitting indefinite detention of an alien would raise a serious constitutional problem."); *Demore v. Kim*, 538 U.S. 510, 528 (2003) (distinguishing *Zadvydas* because the period of detention there was "indefinite" and "potentially permanent"); *Black*, 103 F.4th at 145 ("we nonetheless read *Zadvydas*, *Demore*, *Jennings*, and *Velasco Lopez* to suggest strongly that due process places *some* limits on detention under section 1226(c) without a bond hearing"); *Velasco Lopez*, 978 F.3d at 846.

83. In both cases *Velasco Lopez* and *Black*, the Second Circuit applied the *Mathews v. Eldridge* tripartite framework to determine whether prolonged immigration detention is unconstitutional. *See Black*, 103 F.4th at 145-46; *Velasco Lopez*, 978 F.3d at 851. The *Mathews* analyses in both *Velasco Lopez* and *Black* are materially indistinguishable to prolonged detention under § 1225(b)(2).

84. On the private interest factor, the Second Circuit explained that the interest in being free from imprisonment is the most significant liberty interest there is. *See Black*, 103 F.4th at

---

[8] *Compare Acosta v. Arteta*, No. 1:25-CV-9916 (MKV), 2026 WL 263470, at *7-8 (S.D.N.Y. Feb. 2, 2026) (finding *Black* does not apply to petitioner, who is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A)) *with Acuapan v. Bondi,* No. 26-CV-00384 (OEM), 2026 WL 507889, at *4 (E.D.N.Y. Feb. 24, 2026) (noting *Acosta* was nonbinding on the court and finding the petitioner's ongoing detention under Section 1225(b) violated his due process rights).

151; *Velasco Lopez*, 978 F.3d at 851. That interest is identical here. Also, like detention under § 1226, there is "no administrative mechanism by which [a noncitizen can] challenge[] his detention on the ground that it reached an unreasonable length." *Velasco Lopez*, 978 F.3d at 852; *Black*, 103 F.4th at 151. And as with detention under § 1226(a), detention under § 1225(b)(2) is "not the result of a criminal adjudication." *Velasco Lopez*, 978 F.3d at 851. Finally, the effects of the deprivation of liberty are the same under § 1225(b)(2) as § 1226: the inability to "maintain employment" and "see . . . family or friends," *id.* at 851, and experiencing "health difficulties" in detention, *Black*, 103 F.4th at 151. And on the particular facts here, the length of Petitioner's mandatory detention (almost seven months) is nearly identical to Mr. Black. *See id.* (detained for seven months); *id.* at 150 ("[A]ny immigration detention exceeding six months without a bond hearing raises serious due process concerns.").

85. On the second factor, risk of erroneous deprivation, *Black* is decisive. "[T]he almost nonexistent procedural protections in place for section 1226(c) detainees markedly increased the risk of an erroneous deprivation of Petitioners' private liberty interests." *Black*, 103 F.4th at 152. Like § 1226(c) detention, noncitizens detained under § 1225(b)(2) are not entitled to a bond hearing. In fact, there are even fewer procedural protections for § 1225(b)(2) detainees; whereas § 1226(c) detainees may contest whether they have "committed a crime that makes them subject to mandatory detention," *id.*, § 1225(b)(2) detainees have no administrative process by which to challenge their detention under that statute. Moreover, the Second Circuit observed that § 1226(c)'s "broad reach means that many noncitizens are detained" who may not be dangerous and are not flight risks. *Id.* Section 1225(b)(2) sweeps even more widely and does not include any proxy for dangerousness or flight risk at all, making the risk of erroneous deprivation all the more certain. *Cf. id.* at 153 (finding that it is "virtually certain that [the petitioner's] prolonged

detention was unjustified" when he had, "[f]or the almost twenty years since his criminal conviction . . . led a peaceful life"). Simply put, "'as the period of . . . confinement grows,' so do the required procedural protections no matter what level of due process may have been sufficient at the moment of initial detention." *Velasco Lopez*, 978 F.3d at 854 (quoting *Zadvydas*, 533 U.S. at 701). The second *Mathews* factor heavily favors Petitioner and constitutional protections against prolonged detention under § 1225(b)(2).

86. Lastly, the Government's interests in prolonged detention here are identical to those in *Velasco Lopez* and *Black*. The Government does not have an interest in the prolonged detention of noncitizens "who are neither dangerous nor a risk of flight." *Id.* at 854; *Black*, 103 F.4th at 154. While the Government in *Black* "contend[ed] that these concerns persist unaltered until the noncitizen's removal proceedings are complete," *Black*, 103 F.4th at 153, the Second Circuit rejected this argument, explaining that "the additional procedural safeguards we would allow here under *Mathews* do nothing to undercut those interests." *Id.* "[W]hile the government's legitimate interests justify a relatively short-term deprivation of liberty, the balance of interests shifts as the noncitizen's detention is prolonged without any particularized assessment of need." *Id.* at 154 (citing *Demore*, 538 U.S. at 513). Like § 1226 detention, noncitizens detained under § 1225(b)(2) are detained during the pendency of their removal proceedings. Therefore, just as the Government has no interest in the prolonged detention under § 1226 of noncitizens who are not a danger nor a flight risk during removal proceedings, the Government has no interest in the detention of the same noncitizens under § 1225(b)(2). Thus, following the analyses in *Black* and *Velasco Lopez*, the *Mathews* factors as applied to detention under § 1225(b)(2) decisively favor Petitioner and entitle him to a burden-shifted bond hearing.

87. Finally, in *Black*, the Second Circuit, drawing from *Velasco Lopez* and from other cases in the civil detention context, concluded that the government must be required to bear the burden of proving the need for continued detention. *See Black*, 103 F.4th at 155. Such proof must be made by clear and convincing evidence, *see id.* at 157-58, and must include considerations of ability to pay and alternatives to detention in setting any bond amounts, *see id.* at 158. *See also Beltran Marroquin v. Genalo*, No. 24-cv-6376 (MMG), 2025 WL 3241161, at *3-5 (S.D.N.Y. Nov. 20, 2025); *G.F.F. v. Francis*, No. 25-cv-7368 (JGK), 2025 WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025); *M.P.L. v. Arteta*, No. 25-cv-5307 (VSB), 2025 WL 2938993, at *6 (S.D.N.Y. Oct. 16, 2025).

CAUSES OF ACTION

COUNT I

Violation of the INA
Unlawful Detention Under § 1225(B)(2)

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

89. 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.

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

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

COUNT II

Violation of the Due Process Clause of the Fifth Amendment
Procedural Due Process

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

93. 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.

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

95. 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.

96. 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.

97. Furthermore, Respondents deprived Petitioner of his liberty without a showing that re-detention was warranted by danger to the community or risk of flight—"circumstances materially different from those that supported Petitioner's prior release into the community to live with his sponsor." *R.A.R.R.*, 2026 WL 323040, at *8. Thus, Petitioner's re-detention violated his procedural due process rights.

98. 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 of the Fifth Amendment
Substantive Due Process

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

100. 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.

101. Petitioner is not a flight risk nor is he a danger to the community. He has had a singular criminal arrest in over a decade of living in the United States. He pleaded guilty to N.Y. VTL § 1192.2, a misdemeanor. Since that arrest, he stopped drinking alcohol and completed an alcohol substance use program. He has also fully complied with his conditions of probation. In fact, Mr. A.R. was reporting for probation when he was arrested by ICE. He has lived in the United States for well over ten years and has family here, including four U.S. citizen children. 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.

102. Petitioner's detention without any individualized review of the need for his detention, a lack of consideration of any risk of flight risk or danger or medical issues that counsel against detention subjects him to serious risk of adverse health effects and serious harm violates substantive due process.

COUNT IV

Violation of the TVPRA and APA, 5 U.S.C. § 706(2)
Failure To Make A "Least Restrictive Setting" Determination Required Under 8 U.S.C. § 1232 When Detaining Petitioner

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

104. Respondents violated the Administrative Procedures Act ("APA") by failing to make a "least restrictive setting" determination when Petitioner was arrested by ICE agents and placed into DHS custody.

105. The APA authorizes judicial review from a "final agency action for which there is no other adequate remedy in a court." 5 U.S.C. § 704. A reviewing court is authorized to "compel agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. 706(1), and "hold unlawful and set aside" an action that is determined to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C. §§ 704; 706(2)(A).

106. DHS's arrest and detention of Petitioner without making the required "least restrictive setting" determination constitutes an agency action subject to judicial review. An action is reviewable "where a plaintiff asserts that an agency failed to take a discrete agency action that it is required to take." *Norton v. S. Utah Wilderness All.*, 542 U.S. 55, 64 (2004); *see also* 5 U.S.C. § 551(13) ("defining an agency action as "the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or *failure to act*").

107. DHS's agency action was likewise final. As the Supreme Court established in *Bennett v. Spear*, the finality of an agency action requires both that the action "mark the consummation of the agency's decision making process" and is such that "rights and obligations have been determined, or from which legal consequences will flow." 520 U.S. 154, 177–78 (1997) (citation omitted). DHS's failure to take action to consider the "least restrictive setting" was the

final step in the agency's placement determination for Petitioner. DHS has provided no evidence to suggest that a different placement determination will be made at a future time.

108. Respondents' failure to provide Petitioner with an opportunity for a redetermination of his custody status, pursuant to § 1232(c)(2)(B), and detaining him for an indefinite period, is "arbitrary, capricious, an abuse of discretion" and "not in accordance with the law." § 706(2)(A). Petitioner's freedom and fundamental liberty interests continue to be deprived.

COUNT V

Violation of the Due Process Clause of the Fifth Amendment Procedural Due Process – Prolonged Detention Without a Bond Hearing

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

110. Petitioner's prolonged incarceration without a bond hearing—which has lasted six months already and is certain to extend much longer—violates the Due Process Clause. *See Black*, 103 F.4th at 151.

111. Taken together, the individual factors in Petitioner's case overwhelmingly demonstrate the unreasonableness of continued detention and require either a constitutionally adequate bond hearing or immediate release.

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, ordering a constitutionally adequate, individualized hearing before an impartial adjudicator at which Respondents bear the burden of establishing that Petitioner's continued detention is justified by clear and convincing evidence, with ability to pay and alternatives to detention considered, and at which necessary procedural safeguards are put in place as reasonable accommodations to ensure that Petitioner can meaningfully participate in the proceeding;

f. Enjoin Respondents from invoking an automatic stay under 8 C.F.R. § 1003.19(i)(2) in the event that an immigration judge grants Petitioner bond after a constitutionally adequate bond hearing, *see Rueda Torres v. Francis*, No. 25-cv-8408 (DEH), 2025 WL 3168759, at *6 (S.D.N.Y. Nov. 13, 2025);

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 19, 2026
Brooklyn, New York

Respectfully submitted,

/s/ Lucas Marquez
Lucas S. Marquez
Brooklyn Defender Services
177 Livingston St, 7th Floor
Brooklyn, NY 11201
Tel: 718-254-0700
lmarquez@bds.org

Pro bono Attorneys for Petitioner