UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARVIN GARCIA CABRERA,

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; MARKWAYNE MULLIN, i*n his official capacity as* Secretary of Homeland Security; PAM BONDI, *in her official capacity as* Attorney General,

Respondents.

Case No. 26-CV-1977

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Marvin Garcia Cabrera is a 45-year-old man from El Salvador who has lived in the United States for over 25 years, since approximately 1998. He held Temporary Protected Status for nearly 15 years, but after a catastrophic work accident in 2014, he lost his job and his ability to retain an attorney to help him maintain his immigration status. The accident resulted in severe physical injuries, and Mr. Garcia Cabrera underwent several emergency surgeries and was unable to walk for an extended period of time. Unbeknownst to him, one result of the accident was that he suffered a Traumatic Brain Injury, which further impacted his understanding of his immigration status.

2. On or about November 26, 2025, Immigration and Customs Enforcement ("ICE") arrested Mr. Garcia Cabrera while he was recycling cans at a supermarket in Long Island, New York. ICE has now detained Mr. Garcia Cabrera—first, at the Orange County Jail ("OCJ") in

Goshen, New York and, now, at the Metropolitan Detention Center ("MDC") in Brooklyn, New York—for over 120 days. Respondents are unlawfully detaining Petitioner in violation of his statutory and constitutional rights.

3. Before his ICE arrest, Petitioner lived with one of his older sisters in Roosevelt, New York. Seven of Mr. Garcia Cabrera's nine siblings live in the United States, including his youngest sister who is a naturalized United States Citizen. He has three children who are U.S. Citizens, including a daughter in the U.S. Marine Corps who is petitioning for Mr. Garcia Cabrera to become a Legal Permanent Resident. In addition to this immediate family, he has a large network of extended family in the United States and the New York area, many of which are Legal Permanent Residents or U.S. Citizens.

4. Mr. Garcia Cabrera has continuously resided in the United States since he first arrived in approximately 1998. Since that time, he only briefly departed the country for 12 days in July 2005 with travel authorization to attend his father's funeral. Prior to his departure, he applied for and was granted a unique statutory re-entry permit pursuant to his Temporary Protected Status from DHS. He last entered the United States on July 20, 2005, and was inspected and admitted at John F. Kennedy Airport in Queens, New York.

5. On March 26, 2026, the Immigration Judge granted Mr. Garcia Cabrera Temporary Protected Status. The Department of Homeland Security ("DHS") has 30 days to submit a notice of appeal to the Board of Immigration Appeals, before Mr. Garcia Cabrera's TPS grant is final.

6. Petitioner's detention is unlawful because Respondents are erroneously subjecting him to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) pursuant to an unfounded charging document issued by DHS and a subsequent erroneous determination made by the Immigration Judge in his case finding that he was an arriving alien when he re-entered with travel authorization

based on his TPS in 2005. Respondents' legal interpretation here of Mr. Garcia Cabrera is contrary to the statutory framework of the Immigration and Nationality Act ("INA"), agency regulations, and agency policy and practice maintaining that TPS beneficiaries who travel with permission are *not* arriving aliens upon re-entry solely by virtue of this travel. *See Duarte v Mayorkas*, 27 F.4th 1044, 1058-59 (5th Cir. 2022) (finding under Miscellaneous and Technical Immigration and Nationality Amendments of 1991 ("MTINA") that a traveling TPS beneficiary "shall be inspected and admitted" upon return to the U.S. and returns "in the same immigration status the alien had at the time of departure."); USCIS, *Policy Memorandum: Recission of* Matter of Z-R-Z-C- *as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries* (July 1, 2022).

7. To the extent, DHS is subjecting him to mandatory detention as an arriving alien based on his 1998 entry without inspection, doing so is also plainly contrary to the statutory framework of the INA and long-standing agency practice of applying 8 U.S.C. § 1226(a), *not* § 1225(b).

8. Moreover, ICE detained Petitioner without any individualized review of the necessity of that detention, as required by 8 U.S.C. § 1226(a) and due process, and there is no valid basis for his ongoing immigration detention as he does not pose a flight risk or danger. Instead, he has no criminal convictions and prior to his sudden arrest by ICE was living with one of his sisters in Roosevelt, Long Island. He has extensive ties to the community and family in the United States. Due to Respondents' unlawful actions, however, he has been 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.

9. In addition, Mr. Garcia Cabrera has been diagnosed with [redacted]

at various times during his detention, he has gone without critical medical care and medicine recommended by the government's own contracted medical professionals.

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

JURISDICTION AND VENUE

11. 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).

12. 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.

13. 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 Mr. Garcia Cabrera 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

14. 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.*

15. 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

16. Petitioner Marvin Garcia Cabrera is a 45-year-old national of El Salvador who has lived in the United States since approximately 1998. ICE arrested him on or about November 26, 2025, and are presently detaining him at MDC.

17. 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.

18. 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.

19. 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 Petitioner.

20. Respondent Markwayne Mullin is sued in his 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 Mullin is Petitioner's ultimate legal custodian.

21. 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

22. 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 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).

23. 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 BIA 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).

24. 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).

25. Even though exhaustion is not required, Petitioner has in fact tried to seek relief before the agency to no avail. Mr. Garcia Cabrera, through his immigration attorney, contested the initial erroneous Notice to Appear ("NTA") that falsely alleged he had not lawfully entered the United States. *See* Exhibit A – NTA. When DHS filed a Form I-261 incorrectly amending the designation, allegations, and charge of removability (*see* Exhibit B – Form I-261), Petitioner, through his immigration attorney, again sought to contest the agency's misstatements of law and fact. The Immigration Judge sustained the amended NTA.

STATEMENT OF FACTS

I. Petitioner's History of Holding Temporary Protected Status

26. Mr. Garcia Cabrera is a 45-year-old man from El Salvador who has lived in the United States for over 25 years. He has three U.S. citizen children, including a daughter who is in the United States Marines Corps, presently stationed in North Carolina.

27. Sometime in the lates 1990s, Mr. Garcia Cabrera entered the United States by crossing the southern border, entering without inspection. He began to reside in New York.

28. In March 2001, Mr. Garcia Cabrera timely filed an initial registration application for Temporary Protected Status ("TPS"). In June 2001, pending full approval of initial registration, Mr. Garcia Cabrera's simultaneous request for an Employment Authorization Document ("EAD") was granted under the "C19" category, which indicated he maintained a pending TPS application. He was also issued a Social Security Number. Given the wait time for TPS approval, Mr. Garcia Cabrera was required to submit a subsequent TPS application, filed while his initial registration was still pending. Mr. Garcia Cabrera was finally granted TPS status in 2003. He regularly renewed his TPS status for over a decade.

29. In 2005, while in valid TPS status, Mr. Garcia Cabrera applied for and received travel authorization from DHS to make a brief trip to El Salvador after the death of his father.

30. On or around July 20, 2005, he returned to the United States in accordance with that travel authorization, via Form I-512 Advance Parole Authorization for Humanitarian Reasons, as an individual with a Valid TPS Document. *See* Exhibit C – Form I-512. Upon return, he was inspected and admitted at JFK airport in New York City. *Id.*

31. Mr. Garcia Cabrera continued to reside in the United States, and regularly renewed this TPS until 2014 when he suffered a serious workplace injury that required him to undergo surgery and has caused long-lasting health problems, [redacted] After his accident he was unable to maintain steady employment, leading to periods of housing instability and the inability to retain an attorney to help him maintain his immigration status.

32. In 2018, Mr. Garica Cabrera sought the help of a *notario* to renew his TPS status and file a TPS renewal application. However, this individual failed to assist Mr. Garcia Cabrera in explaining to the U.S. Citizenship and Immigration Services ("USCIS") that he had good cause for failing to timely re-register for TPS.

33. On August 7, 2018, USCIS sent Mr. Garcia Cabrera a Notice of Intent to Deny his TPS renewal for failing to explain why he did not timely re-register and the Notice gave him an opportunity to respond. Mr. Garcia Cabrera asked the same *notario* for assistance with responding to USCIS's Notice of Intent to Deny, and she refused. On September 27, 2018, USCIS denied the TPS renewal application and withdrew Mr. Garcia Cabrera's TPS status.

34. In 2023, Mr. Garcia Cabrera again attempted to file for re-registration of TPS with USCIS. On May 13, 2024, USCIS denied the application, citing the prior denial and explaining that Mr. Garcia Cabrera's TPS status had been withdrawn.

II. Petitioner's Arrest and Detention by ICE

35. On or about November 26, 2025, Mr. Garcia Cabrera was recycling cans at a supermarket on Long Island when an unmarked, black SUV pulled up to the curb. He saw several officers exit the vehicle. He was approached by the officers and taken into custody. At the time of arrest, Mr. Garcia Cabrera became disoriented and since he had previously experienced [redacted] symptoms and other symptoms associated with his [redacted] he requested to be taken to the hospital for evaluation. He was evaluated by a medical professional at the Northwell Health South Shore University Hospital and then ICE took him to an ICE holding facility.

36. Due to Mr. Garcia Cabrera's [redacted] impairments, his memory of the timeline following his arrest is not exact, but he believes he was detained at the ICE holding facility at 26 Federal Plaza in New York, NY for one or two nights before ICE transferred him to Orange County Jail ("OCJ") in Goshen, New York. At some point prior to arriving at OCJ, ICE officers served Mr. Garcia Cabrera with a Notice to Appear, charging him with having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i). *See* Ex. A. Mr. Garcia Cabrera does not recall ICE serving him with a Warrant for Arrest of Alien. Exhibit D, ICE Warrant. Both the NTA and ICE Warrant are dated November 16, 2025, although there is no other evidence that these documents were created or served on Petitioner prior to his apprehension and arrest on November 26, 2025. *See* Exs. A, D.

37. On February 3, 2026, late in the evening, ICE transferred Mr. Garcia Cabrera to MDC, where he has been detained since.

III. Petitioner's Removal Proceedings

38. In his removal proceedings, on November 29, 2025, to support its allegations and charge, DHS submitted Mr. Garcia Cabrera's 2023 application for Employment Authorization pursuant to TPS, which noted that he had last entered the United States following authorized travel on July 20, 2005.

39. On January 13, 2026, at a master calendar hearing before Immigration Judge Dara Reid ("IJ") at the Varick Street Immigration Counsel, Mr. Garcia Cabrera's retained *pro bono* immigration counsel from Brooklyn Defender Services, Hallie Lonial ("Ms. Lonial"). Immigration counsel argued DHS's evidence failed to sustain the allegations and charge in the NTA. Rather than terminating the proceedings, the IJ adjourned the case for DHS to amend the NTA.

40. On January 20, 2026, DHS filed Form I-261, Additional Charges of Inadmissibility / Deportability with the Immigration Court. The document amended the original NTA to allege that Mr. Garcia Cabrera was "an arriving alien," based on his 2005 entry into the United States pursuant to "advance parole." Ex. B, Form I-261.

41. The Form I-261 also revised the charge against Mr. Garcia Cabrera as inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I), a noncitizen "who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality s required under the regulations." *Id.*

42. At a subsequent master calendar hearing on January 29, 2026, Ms. Lonial raised objections to the Form I-261 by written motion and argued that Mr. Garcia Cabrera was not an arriving alien given how that term is defined by statute and regulation, and pursuant to the policy

articulated by USCIS and guidance issued by the DHS Office of General Counsel, pertaining to TPS-authorized travel.

43. The IJ sustained the allegations and the amended charge, finding that Mr. Garcia Cabrera was correctly designated as an arriving alien.

44. For arriving aliens in removal proceedings, USCIS, not the Immigration Court, has jurisdiction over any Form I-485, Adjustment of Status application. *See* 8 C.F.R. § 1245.2(a)(1); 8 C.F.R. § 1245.2(a)(1)(ii). Nevertheless, the IJ noted on the record that she would have jurisdiction over any future adjustment of status application for lawful permanent residency.

45. On February 9, 2026, Mr. Garcia Cabrera filed an application for Temporary Protected Status for *de novo* review before the Immigration Court. He was scheduled for a final hearing on this application, held on March 20, 2026.

46. On March 26, 2026, in an oral decision, the IJ granted Mr. Garcia Cabrera Temporary Protected Status. DHS has thirty days—until April 27, 2026—to appeal the decision to the BIA, before Mr. Garcia Cabrera's TPS grant is final.

47. Following the hearing, off the record, DHS indicated it would not be releasing Mr. Garcia Cabrera from MDC. The IJ also stated that she would not have jurisdiction over custody redetermination (*i.e.,* a bond hearing) because she deemed Mr. Garcia Cabrera an arriving alien, and therefore ineligible for a bond hearing. She further stated that in her view, the only possibility of his release would be through a writ of habeas corpus.

48. On March 27, 2026, Mr. Garcia Cabrera's adult daughter, a U.S. citizen who is currently serving in the U.S. Marines, filed a Form I-130, Petition for Alien Relative before USCIS with Mr. Garcia Cabrera as the beneficiary. USCIS will generally approve the Form I-130 if the application establishes there is a qualifying relationship that allows the beneficiary to adjust status

in the United States. Once the Form I-130 is approved, Mr. Garcia Cabrera will be eligible to apply to adjust status to a lawful permanent resident.

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

49. Mr. Garcia Cabrera is suffering declining physical and mental health in detention. He is diagnosed with [redacted] and suffers from extremely low or low cognitive deficits in most areas of testing, as reported in a March 2026 forensic psychological evaluation by Dr. Edward Fernandez, PsyD. Mr. Garcia Cabrera's [redacted] resulting cognitive disability stem from a serious workplace accident in 2014, where he fell 15-20 feet from a tree, and affect nearly every aspect of his day-to-day life and how he interacts with the world around him. Everything from his memory and the way he processes information, to how he communicates with and understands others, is severely impaired. Of additional concern, when he was first detained at OCJ, he experienced auditory and visual hallucinations, and paranoia.

50. Mr. Garcia Cabrera's detention has exacerbated his symptoms. He worries about his ill mother in El Salvador, and all of his siblings, children, and extended family in the United States. As the eldest son in his family, following the death of his father in 2005, he felt an immense pressure to be a strong provider for the family. He experiences waves of anxiety and intense sadness thinking that he has somehow let them down or is causing them stress by being detained. Since being in ICE custody, his eldest sister suffered [redacted] in part, due to extreme stress of his detention and potential deportation. Mr. Garcia Cabrera reports that the [redacted] [redacted] left her in a coma, and although she is now awake, her mobility and physical health remain unstable.

51. Mr. Garcia Cabrera also suffers from [redacted] and other related conditions which affect his cardiac function and blood pressure. At OCJ he was provided with a special cardiac meal, but since being at MDC he has not been offered this option, despite repeated

requests from his immigration attorney and social worker. He is prescribed several medications to manage his physical symptoms, which have been provided sporadically while in DHS custody despite repeated requests for continuity of care from his legal team. Without medication, Mr. Garcia Cabrera experiences tightness in his chest, loses feeling in his extremities, and starts to see spots; potential preliminary symptoms of medical emergencies like heart attack or stroke.

LEGAL FRAMEWORK

I. Immigration Detention Framework

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

53. 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).

54. 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).

55. 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

56. "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.

57. 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).

58. 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.

59. 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.").

60. 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"); *Morocho v. Jamison*, No. 5:25-CV-05930, 2025 WL 3296300, at *1–3 (E.D. Pa. Nov. 26, 2025)

(same, for noncitizen who had lived in the U.S. for 24 years and was detained by ICE officers "did not provide a reason for the stop; instead, they told him they were looking for another individual and directed him to exit the car"); *Cuy Comes v. DeLeon*, No. 25-CV-9283 (AT), 2025 WL 3206491, at *1, *6 (S.D.N.Y. Nov. 14, 2025) (same, for noncitizen who had lived in the U.S. at least five years and was detained by over a half a dozen agents in front of his home); *Lliguicota v. Cabezas*, No. 25-CV-17216, 2025 WL 3496300, at *1–2 (D.N.J. Dec. 5, 2025) (same, for noncitizen who had lived in the U.S. for nearly thirteen years and was stopped, questioned, and arrested by federal officers "while walking with his family near their residence"); *Lepe v. Andrews*, No. 1:25-CV-01163, 2025 WL 2716910, at *1 (E.D. Cal. Sept. 23, 2025) (same, for noncitizen who had lived in the U.S. for the last 32 years and was stopped and interrogated "while he was walking his dog near his home").

61. 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 if 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 is that the Due Process Clause requires the government to bear the burden of proof by clear and convincing evidence regardless of the length of detention. *See, e.g., Roman v. Decker*, 20-CV-6752 (AJN), 2020 WL 5743522, at *2 (S.D.N.Y. Sept. 25, 2020); *see also Darko v. Sessions*, 342 F. Supp. 3d 429, 435 (S.D.N.Y. 2018) (collecting cases).

III. Petitioner's Detention under § 1225(b)(2) Is Unlawful

62. 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).

63. Following the enactment of the IIRIRA, EOIR drafted 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").

64. 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. Petitioner is Not an Arriving Alien By Virtue of His TPS-Authorized Travel

65. DHS is unlawfully detaining Petitioner in mandatory immigration detention as an "arriving alien" based on his July 20, 2005 re-entry into the United States on TPS-authorized travel. Under statute, regulations, and DHS policy, Petitioner's 2005 re-entry did not make him an arriving alien.

66. Congress created TPS in 1990 "for nationals of designated countries experiencing an ongoing armed conflict, environmental disaster, or extraordinary and temporary conditions." *Saget v. Trump*, 375 F. Supp. 3d 280, 297 (E.D.N.Y. 2019) (citing 8 U.S.C. § 1254a). El Salvador was designed on March 9, 2001 after two separate massive earthquakes. *See Designation of El Salvador Under Temporary Protected Status Program,* 66 Fed. Reg. 14214 (Mar. 9, 2001). El Salvador's TPS designation has been extended 11 consecutive times under the same statutory basis. *See Extension of the Designation of El Salvador for Temporary Protected Status*, 90 Fed. Reg. 5953, 5954, n.2 (Jan. 17, 2025) (most recent extension through September 9, 2026).

67. To be eligible for TPS, a national of a country that has been designated by the Attorney General[1] according to 8 U.S.C. § 1254a(b) must: (1) be a national of the TPS-designated country; (2) have been present in the United States on the date of the initial designation, redesignation, or extension; (3) be otherwise admissible into the United States;[2] and (4) register within a specified time frame. 8 U.S.C. § 1254a(c)(1)(A); 8 C.F.R. § 244.2.

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[1] "Attorney General" in Section 1254a now refers to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

[2] *See* 8 U.S.C. § 1254a(c)(2)(A), 8 CFR § 244.3(a) (providing that the following inadmissibility grounds do not apply to TPS: public charge, 8 U.S.C § 1182(a)(4); labor certification grounds, 8 U.S.C § 1182(a)(5)(A); unqualified physicians, 8 U.S.C § 1182(a)(5)(B); and documentation requirements, 8 U.S.C § 1182(a)(7)(A)(i)).

68. The TPS statute unambiguously provides that "[a] [noncitizen] provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the [noncitizen's] immigration status in the United States." 8 U.S.C. § 1254a(d)(4). The statute also makes clear that the government is prohibited from removing people with TPS status. 8 U.S.C. § 1254a(a)(1)(A) (providing that the government "shall not remove the [noncitizen] from the United States during the period in which such [TPS] status is in effect").

69. Moreover, a benefit of TPS is that a noncitizen "may travel abroad with prior consent of the Attorney General." 8 U.S.C. § 1254a(f)(3). "[I]n keeping with TPS's functionality as a hold on a beneficiary's immigration condition, Congress provided that such travelers 'shall be inspected and admitted in the same immigration status [they] had at the time of departure.' Pub. L. 102-232, § 304(c)(1)(A)." *Duarte v. Mayorkas*, 27 F.4th 1044, 1054 (5th Cir. 2022).

70. Mr. Garcia Cabrera held valid, unexpired TPS status when he departed the United States and upon re-entry, was admitted into that same valid, unexpired status. *See Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021) (holding that TPS is a type of lawful status, similar to U nonimmigrant or asylum status).

71. The regulatory definition of "arriving alien" contains the following caveat: "an arriving alien [...] who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, *solely by reason of that grant of parole,* as an arriving alien under section 235(b)(1)(A)(i) of the Act." 8 C.F.R. § 1.2 (emphasis added).

72. Section 304(c) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), states, in part, that "[i]n the case of an alien [provided

temporary protected status] whom the Attorney General authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization[,] the alien **shall be inspected and admitted in the same immigration status the alien had at the time of departure**" if several conditions are met. MTINA § 304(c), Pub. L. 102-232, 105 Stat. 1733, 1749 (Dec. 12, 1991) (*emphasis added*) (codified as amended at INA § 244, Note 3). Mr. Garcia Cabrera meets the conditions set forth in § 304(c). These four conditions are:

> (1) the noncitizen obtained prior authorization to travel abroad temporarily on the basis of being a TPS beneficiary;
> (2) the noncitizen's TPS was not withdrawn or the designation for their foreign state was not terminated or did not expire during their travel;
> (3) the noncitizen returned to the United States in accordance with the authorization to travel; and
> (4) upon return, the noncitizen was inspected by the former INS or DHS at a designated port of entry and paroled or otherwise permitted to pass into the territorial boundaries of the United States in accordance with the TPS-based travel authorization. *Id.*

73. In *Duarte v. Mayorkas,* three TPS beneficiaries claimed that they were "arriving aliens" when they returned from their TPS authorized travel and thus eligible to adjust status before USCIS. *See* 27 F.4th at 1050. In a March 2022 decision, the Fifth Circuit Court of Appeals rejected these claims, finding that "Congress has statutorily provided that TPS beneficiaries returning from authorized travel abroad must be admitted into the country in the same immigration status they held prior to departure," and thus, "their statuses could not be converted to those of paroled aliens upon their return." Rather, the court found that the TPS beneficiaries, "were fully admitted into the country upon their return and thus were not arriving aliens when they submitted their applications for adjustment of status." *Id.* at 1049.

74. After the *Duarte* decision, in April 6, 2022, the DHS Office of the General Counsel issued the memo, *Immigration Consequences of Authorized Travel and Return to the United States of Individuals Holding Temporary Protected Status* (April 6, 2022) (hereinafter "DHS OGC

memo").[3] The Memo explains that the language of MTINA explicitly requires inspection and admission of individuals re-entering the United States after TPS authorized travel, concluding, "Congress' choice in MTINA to use the well-understood term of art, 'inspected and admitted'[...] indicates that travel abroad and reentry under MTINA was intended to effectuate an admission and thereby align with the requirement of INA § 245(a)." DHS OGC Memo at 16.

75. On July 1, 2022, USCIS issued *Policy Memorandum: Recission of* Matter of Z-R-Z-C- *as an Adopted Decision; agency interpretation of authorized travel by TPS beneficiaries* (July 1, 2022),[4] which, among other things, clarified the application of § 304(c) of MTINA. In the policy memorandum, the agency determined that individuals with TPS who received travel authorization to leave the United States would be deemed "admitted" upon return to the country. The policy memorandum states that those who traveled prior to July 1, 2022, such as Mr. Garcia Cabrera, are at minimum considered paroled, for purposes of adjustment under INA § 245(a). The agency indicates it will determine whether such individuals residing outside of the jurisdiction of the U.S. Court of Appeals for the Fifth Circuit, which decided *Duarte*, should retroactively be deemed as having been admitted on a case-by-case basis.

76. Respondents' legal interpretation of Mr. Garcia Cabrera's 2005 re-entry here is contrary to agency policy and practice of maintaining that TPS beneficiaries who travel with permission are *not* arriving aliens upon re-entry solely by virtue of this travel. S*ee also Michel v.*

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[3] DHS OGC memo *available here* https://uscisdhs-gov.us/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf (PDF pp. 18-46).

[4] USCIS PM-602-0188, *available here* https://uscisdhs-gov.us/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf (PDF pp. 1-17).

Mayorkas, 68 F.4th 74, 80 (1st Cir. 2023) (finding government's position—that TPS holders traveling with authorization are not "arriving aliens"—substantially justified in fees action).

77. Thus, Mr. Garcia Cabrera is improperly detained as an arriving alien subject to mandatory detention.

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

78. 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. 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.

79. 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.

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

80. 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.*,

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

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)) In addition, multiple judges in the neighboring district have also rejected the Government's interpretation of Section 1225(b).[6]

81. 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

[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).

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.

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

[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).

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.

83. 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).

84. 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.").

85. 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").

86. 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).

87. 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").

88. 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)).

89. *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.

90. 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.

91. 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).

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

IV. The Proper Remedy is Release

93. 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).

94. 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.").

95. DHS failed to conduct any individualized custody determination and offer any due process *before* detaining Petitioner. "The suggestion that" the Government may detain noncitizens "without consideration of dangerousness or flight risk so long as the person will, at some unknown point in time, be allowed to ask some other official for his or her release offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Chipantiza-Sisalema,* 2025 WL 1927931, at *3 (ordering habeas relief to noncitizen); *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420, at *2 (E.D.N.Y. Nov. 28, 2025) (ordering habeas relief where noncitizen petitioner's "parole into the United States under Section 1182(d)(5)(A) was premised by law on the determination that she did *not* pose a safety risk. Nothing in the record before this Court shows any change in

circumstances. No one at DHS or ICE ever made any individualized determination that Rodriguez-Acurio poses a flight or public safety risk before she was suddenly arrested and detained...."); *O.F.B.*, 2025 WL 3277677 (ordering habeas relief after prior parole and without subsequent changed circumstances or review); *Hyppolite v. Noem*, 2025 WL 2829511 (E.D.N.Y. Oct. 6, 2025) (same).

96. Irreparable injury has occurred and will continue to occur if Mr. Garcia Cabrera 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).

97. In addition to the baseline harm of unlawful and arbitrary detention, Mr. Garcia Cabrera's mental and physical health will deteriorate further. He has already won his immigration case, and merits release so he can return to his life, be with his family once again, and access medical care in the community.

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

CAUSES OF ACTION

COUNT I

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

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

100. 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.

101. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to Petitioner merely because he re-entered the United States on TPS authorized travel. This is consistent with the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 ("MTINA"), which amended the INA, and provides that "[i]n the case of an alien [provided temporary protected status] whom the Attorney General authorizes to travel abroad temporarily and who returns to the United States in accordance with such authorization[,] the alien shall be inspected and admitted in the same immigration status the alien had at the time of departure" if several conditions are met. MTINA § 304(c). Petitioner meets each of these conditions.

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

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

COUNT II

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

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

105. 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.

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

107. 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.

108. 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.

109. 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
Fifth Amendment of the United States Constitution — Substantive Due Process

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

111. 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.

112. Petitioner is not a flight risk nor is he a danger to the community. He has no criminal convictions, and since the Immigration Judge granted him TPS status, he will once again be able to obtain employment authorization. He has lived in the United States for over 25 years and has family here, including three U.S. citizen children, one of whom has already begun the process of petitioning for Mr. Garcia Cabrera to become a Lawful Permanent Resident. Respondents' detention of Petition 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.

113. 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 APA, 5 U.S.C. §§ 702, 706, and the *Accardi* Doctrine — Erroneous Classification as Arriving Alien

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

115. Respondents are arbitrarily and capriciously categorizing Petitioner as an arriving alien contrary to agency regulations, agency policy, and the Administrative Procedure Act (APA).

116. Mr. Garcia Cabrera held valid, unexpired TPS status when he departed the United States and upon re-entry, was admitted into that same valid, unexpired status. When he re-entered the United States at JFK airport on TPS-authorized travel, he was inspected and admitted.

117. The regulatory definition of "arriving alien" provides: "an arriving alien [...] who was paroled into the United States on or after April 1, 1997, pursuant to a grant of advance parole which the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States, will not be treated, solely by reason of that grant of parole, as an arriving alien under section 235(b)(1)(A)(i) of the Act." 8 C.F.R. § 1.2.

118. Furthermore, it is agency policy that MTINA explicitly requires inspection and admission of individuals re-entering the United States after TPS authorized travel, *See* USCIS PM-602-0188; DHS OGC memo.[8]

119. Respondents' legal interpretation of Mr. Garcia Cabrera's 2005 re-entry is thus contrary to agency policy and practice of maintaining that TPS beneficiaries who travel with permission are *not* arriving aliens upon re-entry solely by virtue of this TPS-authorized travel.

120. Thus, Mr. Garcia Cabrera is improperly detained as an arriving alien subject to mandatory detention.

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

122. Under the *Accardi* doctrine, a foundational principle of administrative law, agencies must follow their own procedures, rules, and instructions. *See United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 268 (1954) (setting aside an order of deportation where the Board of Immigration Appeals failed to follow procedures governing deportation proceedings); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

COUNT V

Violation of the APA, 5 U.S.C. §§ 702, 706, and the *Accardi* Doctrine – Arrest Without Warrant

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

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[8] USCIS PM-602-0188 and DHS OGC memo *available here* https://uscisdhs-gov.us/sites/default/files/document/memos/PM-602-0188-RescissionofMatterofZ-R-Z-C-.pdf.

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

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

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

127. ICE lacked probable cause that Petitioner was in the country unlawfully for the same reasons that it lacked reasonable suspicion. Petitioner also has never been convicted of committing a crime. And ICE lacked probable cause that Petitioner would likely escape before a warrant could be obtained.

128. All of the relevant factors cut against Petitioner being likely to escape before a warrant could be lawfully obtained. ICE had no reason to believe that Petitioner had previously evaded or fled from immigration authorities. ICE failed to properly consider the community-ties factors ("family, home, or employment") that weighed in Petitioner's favor. To the extent that any individualized assessment of Petitioner's likelihood of escape was performed at all, it was clearly erroneous and thus violated the policy.

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

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, and the Administrative Procedure Act;

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

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

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

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

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

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

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

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

Dated: April 2, 2026
Brooklyn, New York

Respectfully submitted,

/s/ Lucas Marquez

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