UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Beltran Mejia Montenegro,

Petitioner,

v.

Raul MALDONADO, JR., Warden, Metropolitan Detention Center; Judith ALMODOVAR, New York Field Office Director for U.S. Immigration and Customs Enforcement; Todd BLANCHE, Acting Attorney General of the United States; Markwayne MULLIN, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 26-cv-2064

VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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

INTRODUCTION

1. Beltran Mejia Montenegro ("Petitioner") is charged with entering the U.S. without inspection and has been living here for more than twenty-five years. He presently resides in Suffolk County, Long Island.

2. Petitioner works in gardening and landscaping. On or around March 9, 2026, Petitioner was inside the Copiague Long Island Railroad Station with two co-workers, awaiting their train to work, when they were approached by Immigration and Customs Enforcement ("ICE") agents. The agent showed them a photograph of a person he claimed to be searching for and asked Petitioner and his co-workers whether they had seen the individual. Petitioner indicated that he did not recognize the individual in the photo and began walking towards the train platform. As he attempted to leave, a second ICE agent intercepted him, blocking his path forward. He asked Petitioner in Spanish whether he was "a resident," to which Petitioner responded "no." The ICE agent immediately handcuffed Petitioner, placed him in their vehicle, and transported him to an ICE processing center in Nassau County. He has been in ICE custody ever since, and is presently detained at the Metropolitan Detention Center ("MDC").

3. Petitioner's detention is unlawful for several reasons.

4. First, it is unlawful due to the erroneous conclusion by the Department of Homeland Security ("DHS") and the Executive Office of Immigration Review ("EOIR") that he is subject to mandatory detention. DHS charged Petitioner with, inter alia, having entered the U.S. without admission or inspection (*see* 8 U.S.C. § 1182(a)(6)(A)(i)) and detained him pending removal

proceedings. Petitioner's detention is the result of a change in DHS policy that was issued on July 8, 2025, and instructed all ICE employees to consider *anyone* who had entered the U.S. without admission or inspection subject to mandatory detention — and therefore ineligible to be released on bond — under 8 U.S.C. § 1225(b)(2)(A).

5. DHS's detention of Petitioner under 8 U.S.C. § 1225(b)(2)(A) violates the plain language of the Immigration and Nationality Act. Section 1225(b)(2)(A) Because Petitioner entered the U.S. many years ago and has since been residing in the U.S., he was not "seeking admission" at the time of his arrest, and this statute does not apply to him. Instead, he is subject to a different statute, § 1226(a), that allows for release on conditional parole or bond and requires an individualized determination upon arrest. The fact that Petitioner's confinement is unlawful has been confirmed by a cascade of decisions by district courts in the Second Circuit, which have rejected Respondents' interpretation of Section 1225(b)(2).

6. Second, Petitioner's warrantless arrest and detention without prior notice or an opportunity to be heard was in violation of the Fourth Amendment and the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

7. Third, ICE arrested Petitioner in violation of 8 U.S.C § 1357(a)(2), which only permits warrantless arrests if the agents had 1) a "reason to believe that [the subject] was removable" and that 2) [the subject] was "likely to escape before a warrant can be obtained". The ICE agents had no information about Petitioner other than his alleged confirmation that he was not "a resident" — a statement which in and of itself does not conclusively establish that he is removable — and no basis to conclude that he was "likely to escape."

8. Accordingly, Petitioner brings this petition seeking immediate and unconditional release.

9. Petitioner also asks this Court to enjoin his transfer outside this District. *Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)); *Perez y Perez v. Noem*, 25 Civ. 4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

10. Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates federal law and (2) order his release.

PARTIES

11. Petitioner has been in immigration detention since March 9, 2026. Petitioner is unable to obtain review of his custody by an immigration judge, pursuant to the Board's decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025).

12. Respondent Raul MALDONADO JR. is the Warden of the Metropolitan Detention Center.

13. Respondent Judith ALMODOVAR is the Field Office Director for ICE's New York Field Office. She is responsible for administering immigration laws and executing detention warrants and removal orders.

14. Respondent TODD BLANCHE is the Acting Attorney General of the U.S. He is responsible for the policies and operations of the DOJ.

15. Respondent MARKWAYNE MULLIN is the Secretary of DHS. He directs each component agency within DHS, including ICE.

16. Respondent TODD M. LYONS is the Acting Director of ICE. He directs ICE operations and is responsible for administering immigration laws.

17. All of the foregoing respondents are named in their official capacities.

JURISDICTION AND VENUE

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

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

20. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973). Petitioner is incarcerated at the Metropolitan Detention Center, which is located within this District. Further, the ICE office that controls the location of his detention is based in New York City, and a substantial part of the events giving rise to the claims and relevant facts occurred in this District.

EXHAUSTION

21. "There is no statutory requirement that a habeas petitioner exhaust his administrative remedies before challenging his immigration detention." *Wei Yin v. Maldonado*, No. 26-CV-0103 (PKC), 2026 WL 295389, at *2 (E.D.N.Y. Feb. 4, 2026), *quoting Araujo-Cortes v. Shanahan*, 35 F. Supp. 3d 533, 538 (S.D.N.Y. 2014).

22. To the extent that any prudential considerations might lead the Court to consider requiring exhaustion as a matter of discretion, the Supreme Court has recognized that courts should not require exhaustion where there is an "unreasonable or indefinite timeframe for administrative

action." *McCarthy v. Madigan*, 503 U.S. 140, 147 (1992). Exhaustion is thus not appropriate where the plaintiff "may suffer irreparable harm if unable to secure immediate judicial consideration of his claim." *Id.* Similarly, exhaustion is not required where any requests for administrative relief would be futile. *Id.* at 148-49; *see also Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

23. Here, the continued deprivation of Petitioner's liberty will cause him irreparable injury, and exhaustion would be futile because neither the Immigration Judge nor the Board of Immigration Appeals ("BIA"), as administrative bodies, can rule on the constitutionality of Petitioner's detention. *See Matter of Rodriguez-Carillo*, 22 I. & N. Dec. 1031, 1035 (BIA 1999) ("[N]either the Immigration Judge nor this Board may rule on the constitutionality of the statutes that we administer."). There is, therefore, no administrative forum where Petitioner can raise constitutional challenges to his detention.

STATEMENT OF FACTS

24. Petitioner has resided in the U.S. for over 25 years and is charged with entering the country without inspection. Upon information and belief has had no prior contact with immigration authorities. He has lived in the U.S. continuously, primarily in Long Island, New York.

25. Petitioner has been a long-time fixture in his community on Long Island, where he has longstanding friends and works hard and consistently. Petitioner is neither a flight risk nor a danger to the community.

26. Petitioner was arrested and detained by two ICE agents while he was en route to the train at the Copiague Long Island Railroad station. ICE agents approached Petitioner and two co-workers inside the station to show them a photo of an individual he purportedly was looking for, a known tactic used by ICE agents to initiate conversations. Even though Petitioner responded to the agent's inquiry about the individual in the photo, he was intercepted by another agent when

he attempted to proceed to the train platform. Both agents were wearing tactical gear. The second agent intentionally blocked Petitioner's path while asking him, in Spanish, if he was a resident.

27. Petitioner was then arrested and transported to an ICE processing center in Nassau County, where he was asked additional questions. Petitioner was then transferred to the Delaney Hall Detention Facility in Newark, New Jersey. Approximately one week later, he was transferred again to his present facility, the MDC, which has notoriously horrific conditions of confinement.

28. DHS has initiated removal proceedings against Petitioner pursuant to 8 U.S.C. § 1229a and served him with a Notice to Appear (NTA). The NTA charges him with being present in the U.S. without being admitted or paroled, stating that he entered the U.S. at or near an unknown place on or about an unknown date, and was not admitted or paroled after inspection by an Immigration Officer.

29. Due to Petitioner's detention under 8 U.S.C. § 1225(b)(2)(A), and the BIA's binding decision in *Matter of Yajure Hurtado,*[1] *see infra*, which forecloses immigration courts from hearing requests for or granting bond to noncitizens present in the U.S. without admission, he faces the prospect of months or even years in immigration custody unless this Court grants the requested relief.

LEGAL FRAMEWORK

A. The Immigration and Nationality Act

30. This case concerns the propriety of Petitioner's detention and denial of a bond hearing under 8 U.S.C. § 1225(b)(2)(A).

[1] 29 I. & N. Dec. 216 (BIA 2025).

31. For decades, the government generally subjected noncitizens who entered without inspection, were arrested in the U.S., and were placed into removal proceedings to discretionary detention under 8 U.S.C. § 1226(a). Detention under Section 1226(a) is discretionary, not mandatory. Under the statute, DHS may release a noncitizen if they "demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and … [are] likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-CV-5937, 2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If satisfied, DHS "may release the [noncitizen] on — (A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C.§ 1226(a)(2)(A)–(B).20.

32. In addition, if, after individualized consideration, ICE chooses to detain the noncitizen pending removal proceedings, Section 1226(a) then affords the noncitizen the opportunity to have a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

33. Detention under Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S.281, 289 (2018) (emphasis added), Section 1225(b)(2)(A) governs detention of noncitizens seeking entry into the U.S. (i.e., "applicants for admission"). It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229(a) of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis

added). In other words, Section 1225(b) mandates detention, without consideration for release, for those noncitizens who fall within the parameters of the statute.

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

35. However, on July 8, 2025, ICE, "in coordination with" DOJ, issued a memo announcing a new policy that rejected the well-established understanding of the statutory framework and reversed decades of practice.[2] The policy claims that all persons who entered the U.S. without inspection shall now be subject to mandatory detention under § 1225(b)(2)(A), regardless of when a person is apprehended, and affects those who have resided in the U.S. for months, years, and even decades.

36. On September 5, 2025, the Board adopted ICE's new policy in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), a precedential decision finding that all noncitizens who, like Petitioner, have not been admitted to the U.S. are *per se* ineligible for bond, even if they are neither a danger nor a flight risk. There, the Board held that all noncitizens who entered the U.S.

[2] A copy of ICE's memo to all employees, titled "Interim Guidance Regarding Detention Authority for Applications for Admission" is *available at* http://bit.ly/4bTypf8

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

37. Since ICE adopted the new policy, innumerable district courts in the majority of circuits that have confronted this issue "ha[ve] concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez v. Bostock, No.* 25-cv-5240, 2025 WL 2782499, at *1 & n.3 (W.D. Wash. Sep. 30, 2025) (collecting cases which disagreed with the government's interpretation).[3] *But see Buenrostro-Mendez v. Bondi*, 166 F.4th 494 (5th Cir. 2026) (holding that noncitizens in removal proceedings who have not been admitted are subject to detention under § 1225(b)(2)(A)); *Avila v. Bondi,* No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026) (same). As Judge Kaplan noted when considering this issue last November,

> [T]he administration's new position that all noncitizens who came into the United States illegally, but since have been living in the United States, must be detained [under Section 1225(b)(2)(A)] until their removal proceedings are completed [] has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different

[3] *See, e.g., Lopez Benitez v. Francis*, 25-cv-5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz,* 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-cv-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 25-cv-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, 25-cv-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, 25-cv-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 25-cv-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 25-cv-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. 25-cv-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. 25-cv-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 25-cv-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 25-cv-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-cv-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-cv-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Chogllo Chafla v. Scott*, 25-cv-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 25-cv-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 25-cv-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same).

> courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant.

See Barco Mercado v. Francis, No. 25-cv-6582 (LAK), 2025 WL 3295903, at *4 (S.D.N.Y. Nov. 26, 2025) (citations omitted); *see also Sharifzoda v. Orange Cty. Jail*, No. 26-cv-2486 (KMK), 2026 WL 851378, at *1 n.2 (S.D.N.Y.) (disagreeing with *Buenrostra-Mendez* and *Avila* and noting that as "out-of-circuit cases" they are "not controlling") (internal citation omitted).

38. Many courts have rejected ICE's and the EOIR's new interpretation because it ignores the plain text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted.

39. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the U.S. who has not been admitted or who arrives in the U.S. The term "seeking admission … necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical to the statutorily defined term "applicant for admission." Such an interpretation violates the rule of surplusage and negates the plain meaning of the text.

40. The legislative history further shows that § 1226(a) was intended to "restate[] the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond an alien who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)). Indeed, shortly after the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), the former Immigration and Naturalization Service and the

EOIR (which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

41. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the U.S. generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request — even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue), *Barco Mercado*, 2025 WL 3295903, at *2 (observing that the "only thing that changed" in the law between the petitioner's entry into the U.S. and his recent detention "was that the current administration told ICE agents in substance that it did not agree with the law that had been applied consistently for decades").

42. The 2025 amendments to § 1226, effected by The Laken Riley Act (LRA) (*see* § 1226(c)(1)(E)), also evidence an understanding that individuals who were not admitted or paroled and were detained while already in the U.S. still fell under § 1226(a). Through the LRA, Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E), a provision which would be wholly unnecessary if

every noncitizen who was present without being admitted was already subject to mandatory detention under § 1225(b)(2).

43. As numerous courts have now held, Petitioner's prior entry into the U.S. and decades of continuous presence in the U.S. are contrary to the long-standing interpretation of "seeking admission" under § 1225(b)(2)(A). *See, e.g., Caivanagua Sanchez v. Genalo et al.*, No. 1:26-cv-476 (LDH) (E.D.N.Y. Mar. 26, 2026) (holding that petitioner who had lived in the United States for more than twenty years was not "seeking admission"), *Giron v. Genalo*, No. 2:26-cv-01714, 2026 WL 809965 (E.D.N.Y. Mar. 24, 2026) (petitioner who had lived in U.S. for more than two decades is not "seeking admission" and not subject to detention under under § 1225(b)(2)(A)), *Cadena-Gallegos v. Bondi*, No. 2:26-cv-844 (NJC), 2026 WL 413673 (E.D.N.Y. Feb. 14, 2026) (detention under § 1225(b)(2)(A) improper where petitioner had lived in interior of the United States for more than two years prior to detention by ICE and was therefore not "seeking admission"), *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 2025 WL 3314420, at *309 (E.D.N.Y. Nov. 28, 2025) (holding that petitioner, while an "applicant for admission," is not "seeking admission" under Section 1225(b)(2) because she was "clearly … not presenting herself at the border" nor "recently apprehended just after entering").

44. Petitioner's detention is governed by § 1226(a), and his continued detention under § 1225(b)(2)(A) is contrary to decades of precedent and in excess of statutory authority.

B. Noncitizens' Procedural Due Process Rights

45. Approximately one week before the 2020 presidential election, the Second Circuit issued an opinion in *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020), in which it declared that "[n]o one disputes that the Fifth Amendment entitles noncitizens to due process of law." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020), *citing Reno v. Flores*, 507 U.S.

292, 306 (1993). Now, the *Velasco Lopez* court's simple affirmation of decades-old precedent exudes irony, even though the Supreme Court has gone further, making clear that due process of law applies to noncitizens "whether their presence [in the U.S.] is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693 (citations omitted). Due process is meant to ensure that DHS cannot pursue "enforce[ment] [of] this country's immigration laws efficiently … at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 2025 WL 1284720, at *1 (W.D.N.Y. May 2, 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

46. Where violations of procedural due process allegedly occur, they are evaluated using the three-factor balancing test established by the Supreme Court in *Mathews v. Eldridge*: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

47. In the context of immigration detention, the Second Circuit has held that procedural due process requirements "take on particular significance" where, like Petitioner, the individual is not simply "'detained'[] … [but] incarcerated under conditions indistinguishable from those imposed on criminal defendants sent to prison following convictions for violent felonies and other serious crimes." *Velasco Lopez,* 978 F.3d at 850.

48. In light of a noncitizen's due process rights, as well as procedural rights conferred by Section 1226(a) and implementing regulations, the decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and danger to the community. *See*

Velesaca v. Decker, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

49. The Supreme Court has recognized that "the [private] interest in being free from physical detention" is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Consequently, the Fifth Amendment's guarantee of procedural due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that the "notice must be afforded within a reasonable time and in such a manner as will allow [noncitizens] to actually seek … relief[.]" *Id.*

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

51. Since the change in ICE policy, which has led to a drastic surge in noncitizens seeking habeas relief, Courts in this circuit have repeatedly affirmed that due process *requires* the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. As Judge Chen recently observed, the notion "that government agents may sweep up any person they wish, for any reason,

and hold that person … without consideration of dangerousness or flight risk until, at some point, they are provided a hearing, offends the ordered system of liberty that is the pillar of the Fifth Amendment." *Wei Yin*, 2026 WL 295389, at *3, *quoting Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *3 (S.D.N.Y. July 13, 2025) (internal quotation omitted).

52. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g.*, *Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment before detaining him—any post-deprivation review by an immigration judge would be inadequate."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *Kelly*, 2025 WL 2381591, at *3 (same). As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *Cuy Comes v. DeLeon*, No. 25 CIV. 9283 (AT), 2025 WL 3206491, at *6 (S.D.N.Y. Nov. 14, 2025) (ordering immediate release where petitioner's first encounter with ICE was a detention without an individualized determination); *Perez Velasquez v. Noem*, No. 25 CIV. 10338 (AT), 2025 WL 3707526, at *4 (S.D.N.Y. Dec. 22, 2025) (same); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

53. Respondents' conduct in this case warrants Petitioner's immediate release. Not only did they deprive Petitioner of an individualized determination prior to his detention, but the ICE agents arrested and detained him with seemingly no information about him, let alone a

justification, whatsoever. One moment, Petitioner was on his way to catch a train to work—as he has likely done countless times over the decades he has lived here—and the next moment, he was whisked away in handcuffs by two men in tactical gear after answering a (presumptively disingenuous) request for assistance. It is a chilling tale that has become all too common among noncitizens.

54. "It is clear, not only from the language of [28 U.S.C.] §§ 2241(c)(3) and 2254(a), but also from the common-law history … that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (holding that detention became unlawful once the conditional-release date had passed and ordering release); *see also Munaf v. Geren*, 553 U.S. 674, 693 (2008) ("The typical remedy [for unlawful detention] is, of course, release.") (citation omitted).

55. No procedural alternative to immediate release can sufficiently remedy the immense due-process violation Petitioner has suffered as a result of his race-based detention. *See, e.g., Rodriguez-Acurio*, 2025 WL 3314420, at *319-20 (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out."); *Tumba v. Francis*, No. 25-cv-8110 (LJL), 2025 WL 3079014, at *8-9 (S.D.N.Y. Nov. 4, 2025) (ordering release); *Hyppolite*, 2025 WL 2829511, at *16 (same). Petitioner's detention was unlawful from the moment he was detained and then taken into custody. Respondents afforded him no process before detention and have baselessly asserted authority to subject him to mandatory detention. Immediate release is the appropriate remedy.

56. In the alternative, Petitioner seeks, at a minimum, a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez*, 978 F.3d at 851.

CAUSES OF ACTION

FIRST CLAIM:

Violation of the Immigration and Nationality Act

57. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

58. The mandatory detention provision at 8 U.S.C. § 1225(b)(2) does not apply to all noncitizens residing in the interior of the U.S.

59. Petitioner is subject to detention only pursuant to 8 U.S.C. § 1226(a), as reflected in longstanding historical practice. Respondents did not conduct an individualized determination that Petitioner presents a danger or risk of flight prior to his detention as required under Section 1226(a).

60. DHS nonetheless maintains that Petitioner is subject to mandatory detention under § 1225(b)(2). The application of §1225(b)(2) to Petitioner unlawfully mandates his continued detention and violates the INA.

SECOND CLAIM

Violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution (Procedural Due Process)

61. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

62. 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 [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

63. Courts use the three-factor *Mathews v. Eldrige* test to determine what process is due to noncitizens challenging detention.: (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." 424 U.S. at 335.

64. Here, all three factors weigh heavily in Petitioner's favor. Petitioner has a strong liberty interest in his continued freedom and in the life he has established over the more than two decades he has lived in the U.S.

65. Respondents subjected Petitioner to mandatory detention without prior notice or a meaningful opportunity to respond, making the risk of his erroneous deprivation of liberty not just high, but certain.

66. Petitioner's detention as a consequence of the Respondents' insufficient safeguards and lack of procedure creates unnecessary fiscal and administrative burdens on the government and undermines the public trust in the fair and just execution of its laws.

67. Respondents violated procedural due process by detaining Petitioner without adequate procedural protections before or after the deprivation of his liberty. Therefore, this Court should order Petitioner's release without any restraints on his liberty and prohibit any re-detention absent constitutionally adequate pre-deprivation processes.

THIRD CLAIM:

Violation of the Fourth Amendment to the U.S. Constitution
(Freedom from Unlawful Stop and Seizure)

68. Petitioner realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

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

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

72. Here, there was no basis to stop, detain, or question Petitioner other than his race. Rather, his detention was part of a coordinated, indiscriminate sweep of individuals who appeared to be of Hispanic descent in certain communities of New York. Hispanic individuals are stopped, detained, questioned, and in some cases threatened based solely on their race.

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

74. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado*, 2025 WL 2337099, at *18, *report and recommendation adopted*, 2025 WL 2349133 (ordering habeas petitioner's "release from detention … granted because her Fourth Amendment rights were violated.").

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[4]

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

3. Declare that Petitioner's arrest and detention violate the Due Process Clause of the Fifth Amendment; the Fourth Amendment; and the INA and implementing regulations;
4. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, including electronic monitoring, and enjoining any re-detention under the immigration laws of the United States, pending a final determination in his removal proceedings;
5. In the alternative, conduct a constitutionally adequate, individualized bond hearing for Petitioner within 14 to 21 days in which:
    a. The government bears the burden of establishing by clear and convincing evidence that Petitioner's continued detention is justified;
    b. The Court meaningfully considers alternatives to imprisonment, such as release on recognizance, parole, or electronic monitoring, and meaningfully considers Petitioner's ability to pay if setting a monetary bond;
6. Order that Respondents return Petitioner's property including, but not limited to, any identification documents.
7. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,



Dated: April 7, 2026
Brooklyn, NY

Diane M. Fischer

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Pro Bono Counsel for Petitioner

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

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

Dated: April 7, 2026
Brooklyn, NY



Diane M. Fischer

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