UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUAN CARLOS LOPEZ MENJIVAR

Petitioner,

v.

EMERGENCY HABEAS CORPUS PETITION

A No. [redacted]

KEN GENALO, NY Director, Field Office, Enforcement and Removal Operations. U.S. Immigration and Customs Enforcement;

TODD LYONS, Director, U.S. Immigration and Customs Enforcement;

MARKWAYNE MULLIN, Secretary of the U.S. Department of Homeland Security; and

TODD BLANCHE , Attorney General of the United States,

RAUL MALDONADO, Warden MDC, Brooklyn, NY

Respondents

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PETITION FOR WRIT OF HABEAS CORPUS (28 U.S.C. § 2241) AND EMERGENCY ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

1. **JUAN CARLOS LOPEZ MENJIVAR** ("Petitioner"), by counsel, respectfully petitions for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 and moves by Emergency Order to Show Cause and Temporary Restraining Order. This application is filed on an emergency basis to prevent Petitioner's unlawful transfer or removal and to preserve this Court's jurisdiction.
2. This Petition challenges the legality of Petitioner's arrest and continued detention under the Fourth Amendment, 8 U.S.C. §§ 1225, 1226, and or 1231, and 1357, the Due Process Clause, and binding agency regulations. The central question presented is straightforward: under what lawful statutory authority is Petitioner currently detained, and was that authority validly invoked?
3. The Supreme Court has emphasized that freedom from physical restraint lies at the core of the liberty protected by the Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). Where detention is

challenged, the government must identify and justify the legal authority for incarceration.

4. Section 2243 provides that once a habeas petition is presented, *the Court shall "forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted," and that the custodian "shall make a return certifying the true cause of the detention."* The statute further contemplates expedition, providing that the return shall be made within 3 days unless additional time is allowed for good cause.

5. 28 U.S.C. § 2241(c)(3) provides that a court shall grant the writ of habeas corpus if a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." The Fifth Amendment requires that "[n]o person shall be . . . be deprived of life, liberty, or property, without due process of law." U.S. Cont. amend. V. These due process rights apply to all persons in the United States, whether citizens or not. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.").

6. "The writ of habeas corpus stands as a safeguard against imprisonment of those held in violation of the law." *Harrington v. Richter*, 562 U.S. 86, 91 (2011); see also *Ozturk v. Hyde*, 136 F.4th 382, 393 (2d Cir. 2025). 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).

7. "The typical remedy" for unlawful executive detention," "is, of course, release," if the government's ongoing detention of Petitioner, in the face of yet another complete failure of process, entitles him to immediate release *Munaf v. Geren*, 553 U.S. 674, 693 (2008). "[T]he traditional function of the writ is to secure release from illegal custody"; it is the "usual remedy by which a man is restored again to his liberty, if he have been against law deprived of it." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973)

(internal citation omitted). Habeas corpus "is perhaps the most important writ . . . 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) (internal citation omitted). And "if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." *Id.* at 402.

8. If a detention results from an agency violating its own regulations, the Government may not have provided the detainee with the process to which he is due under the Constitution, and the writ can issue. *See Funes v. Francis*, --- F. Supp. 3d ---, No. 25-CV-7429, 2025 WL 3263896, at *24–25 (S.D.N.Y. Nov. 24, 2025); *E.M.M. v. Almodovar*, No. 25-CV-08212, 2025 WL 3077995, at *6 (S.D.N.Y. Nov. 4, 2025); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 414–15 (S.D.N.Y. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025); *Chipantiza-Sisalema v. Francis*, No. 25-CV-05528, 2025 WL 1927931, at *3–4 (S.D.N.Y. July 13, 2025); *Roman-Cruz v. Lyons*, No. 25-CV-10522, 2026 WL 114936, at *2–3 (S.D.N.Y. Jan. 15, 2026). "The common-law history of the writ underscores that the traditional remedy in habeas is release from illegal custody." *Funes*, 2025 WL 3263896, at *24 (citing *Preiser v Rodriguez*, 411 U.S. 475, 484 (1973)); *accord Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 107 (2020) ("Habeas has traditionally been a means to secure *release* from unlawful detention." (emphasis in original)); *Munaf v. Geren*, 553 U.S. 674, 693–94 (2008).

THE ILLEGAL ARREST

9. **JUAN CARLOS LOPEZ MENJIVAR is a 40-year-old man born in El Salvador who has lived the last twenty-one years in the US since his arrival in 2005.**
10. **He is in a relationship with the mother of his child and has a [redacted] daughter.**
11. **He has never been arrested by the police.**
12. **Until his recent arrest by ICE in New York, he lived at [redacted].**
13. **On March 17th, 2026, he was arrested at JFK Airport in the bathroom after having been let in to boarding area of a domestic flight to Las Vegas when he was arrested by ICE agents.**
14. **He was detained without a warrant, without probable cause or reasonable suspicion to effectuate an interrogation.**

15. This obviously happened without an administrative, arrest, or search warrant.

16. Upon information and belief, the ICE agents had no valid charging instrument, no warrant of arrest, no administrative file, before interrogating him, nor at the time of his arrest.

17. The ICE agents did not have probable cause to arrest him.

18. At no time, neither before, during or after his arrest, did ICE ever conduct a meaningful individualized custodial determination or custody review before or contemporaneously with his arrest, as required by law.

19. Petitioner was given no prior notice that he would be arrested, nor an opportunity to be heard on ICE's decision to detain him, and he was not afforded due process.

20. During or after his arrest, he was not permitted to make any phone calls, and he did not even know where he was being taken.

21. DHS is now incarcerating him indefinitely without an individualized custody determination as required by the Fourth Amendment, the Due Process Clause of the Fifth Amendment, and the governing detention statutes and regulations.

22. As proven below, ICE unlawfully arrested him without 1) a "reason to believe that he was removable" and that 2) he was "likely to escape before a warrant can be obtained," which are the minimum requisites under INA Section 287 (a)(2), 8 USC 1357 (a)(2) for a warrantless arrest by ICE.

23. When ICE agents later fingerprinted him and booked him at DHS processing offices, they did not follow statutorily and constitutionally guaranteed procedures for due process.

24. That is why Petitioner now comes to this Honorable Court seeking justice.

THE RELEVANT IMMIGRATION HISTORY

25. He entered the U.S. in 2005, fleeing El Salvador's violence. Beginning with the aftermath of the Salvadorian Civil War, when he became an orphan after his father, who was a peasant, was assassinated [redacted] Later, he suffered persecution at the hands of the criminal gangs controlling El Salvador and had to flee the country to the U.S.

26. Upon entry at the Southern border in 2005, he was processed by DHS and released.

27. The immigration court later sent him a Notice to Appear, which his current immigration lawyer believes may have been defective under *Niz v. Garland*, the U.S. Supreme Court case invalidating tens of thousands of Notices to Appear because they did not specify the time and place for noncitizens to appear for their hearings.

28. His current immigration lawyer has filed a motion to reopen the removal order under which ICE arrested him. If granted, it will allow Petitioner to defend himself at a future removal hearing at the immigration court.

29. Today, he has an eight-year-old U.S. citizen daughter who may qualify him for cancellation of removal, which can result in legal permanent residence for him, an application he will be pursuing.

30. This immigration application takes years to resolve, and it would be punitive to keep him in jail while it is pending. That application can only be submitted if he is placed into removal proceedings.

Emergency Habeas Petition, Request for Immediate Order to Show Cause Under 28 U.S.C. § 2243, and Application for Temporary Restraining Order to Preserve Jurisdiction and Meaningful Review

31. Petitioner respectfully submits this emergency petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, challenging the legality of his arrest and continued detention by Respondents.

32. Because Petitioner is presently in federal immigration custody and subject to transfer at any time, immediate judicial intervention is necessary to preserve this Court's jurisdiction and ensure meaningful review of the legality of detention.

33. Pursuant to 28 U.S.C. § 2243, Petitioner respectfully requests that the Court issue an Order to Show Cause directing Respondents to demonstrate why the writ should not be granted and to certify the true cause of Petitioner's detention. Section 2243 requires prompt judicial inquiry into executive restraint and the custodian to file a return setting forth the statutory and factual basis for confinement.

34. Wherefore, Petitioner respectfully requests that this Court Order the Respondents to Show Cause pursuant to 28 U.S.C. § 2243 why a Temporary Restraining Order should not remain in effect pending swift adjudication of the habeas petition:

a) Prohibiting Respondents from transferring Petitioner outside this District absent further order of this Court
b) directing Respondents to provide reasonable and timely access to counsel, including

meaningful and confidential in-person legal visitation;

c) directing Respondents to file, within forty-eight (48) hours, a full return certifying the statutory and factual basis for detention pursuant to 28 U.S.C. § 2243;
d) requiring production, within forty-eight (48) hours of this Order, of all custodial and administrative documents supporting detention, as well as all DHS and ICE custody, detention, and administrative records, with appropriate relief for noncompliance;
e) producing Petitioner forthwith before this Court as necessary to effectuate meaningful habeas review; and upon adjudication of the Petition, granting the writ of habeas corpus and ordering Petitioner's immediate release from unlawful detention;
f) awarding reasonable attorney's fees and costs pursuant to the Equal Access to JusticeAct, 28 U.S.C. § 2412(d), should Petitioner prevail in this action;
g) ordering that Petitioner shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a), that Petitioner be "entitled to release from the unlawful restrictions on his liberty which means, in the circumstances here, restoration of... the status quo ante." *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-cv-5279, 2025 WL 3281514, at *8 (S.D.N.Y. Nov. 25, 2025) (ordering government release petitioner from "restrictions on his liberty imposed as a result of his unlawful [detention]... including the ankle monitor and reporting requirements") and "an injunction barring deprivation [of any] of the [Petitioner's] rights without the requisite procedural protections." *Id. See Ccorihuaman v. Genalo* No. 26-cv-554 (E.D.N.Y. Feb 6, 2026) and
h) ordering that Respondents shall return to Petitioner all personal property belonging to Petitioner that was seized at the time of detention and that is currently in their custody, possession, or control, whether maintained directly by Respondents or by any contracted or affiliated facility, and that such property shall be returned in the same condition as it existed immediately prior to Petitioner's detention; and
i) Granting such other and further relief as this Court deems just and proper.

PREFACE

Petitioner's Arrest and Detention Without Notice of the Asserted Statutory Basis for Custody, Without a Contemporaneous Individualized Custody Determination, and Without the Administrative Record Violates the Fourth Amendment, the Fifth Amendment, the Immigration and Nationality Act, and Governing Regulations

35. At the time of arrest, Petitioner was not specifically advised under which statutory provision DHS claimed authority to arrest and detain him. He was not told whether DHS was proceeding under 8 U.S.C. § 1225, § 1226, or § 1231, and was not provided with any official custody or detention documents, or any part of the administrative file, or contemporaneous custodial documentation sufficient to determine which detention framework DHS intends to invoke. Under those circumstances—particularly where this Petition is being filed on an emergency basis to preserve jurisdiction before transfer and before DHS has produced the record—Petitioner is compelled to plead in the alternative. That is not speculation for its

own sake; it is a necessary response to DHS's failure to identify the statutory basis for custody at the time liberty was first restrained.

36. Petitioner has not had an adequate right to counsel since his arrest, nor the opportunity to interview with an attorney, and the facts alleged about his case are based on interviews with family members and, as such, are made upon information and belief.

37. This alternative pleading is also warranted because recent immigration habeas litigation in New York and New Jersey has revealed a recurring pattern of shifting detention theories, including efforts by DHS to characterize detention under 8 U.S.C. § 1225 in cases where individuals were arrested in the interior after extended residence in the United States and where, under prior practice, detention would have proceeded under § 1226. Courts addressing these cases have repeatedly noted the inconsistency, imprecision, and after-the-fact nature of DHS's statutory theories. See, e.g., *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC) (E.D.N.Y. Nov. 10, 2025) (describing DHS's detention theories as "imprecise and shifting" and explaining that the inconsistencies "call into question the basis for [the] detention") ; *Rivera Zumba v. Bondi*, No. 25-14626 (KSH), 2025 WL 2753496 (D.N.J. Sept. 26, 2025) (describing the agency's new practice of classifying persons long present in the United States, "for the first time," as arriving aliens seeking admission) . In light of that pattern, and because DHS has not disclosed the records needed to identify the precise detention theory here, Petitioner must preserve all applicable statutory and constitutional challenges from the outset.

38. Whether DHS ultimately claims detention under § 1225 or § 1231, the same fundamental principles govern. DHS may not deprive a person of liberty without identifying a lawful statutory basis for custody, without complying with the procedures that govern that custody framework, and without affording constitutionally adequate process, including notice and a meaningful opportunity to be heard. Because DHS did not identify the asserted statutory basis for arrest at the time of detention, and because the record necessary to test that assertion has not been produced, Petitioner pleads in the alternative below and reserves the right to amend as soon as DHS discloses the administrative file and custodial documents.

39. Petitioner files this action at the inception of custody, before Respondents have produced the administrative file or any reliable record identifying the legal basis for arrest or detention. As of filing, neither Petitioner nor counsel has been provided any contemporaneous custodial documentation, including any executed administrative warrant, charging document, reinstatement notice, revocation notice, custody determination, or record establishing whether Respondents purport to proceed under 8 U.S.C. § 1225, or § 1231. Petitioner therefore pleads in the alternative, on information and belief, that whichever detention provision Respondents may later invoke, the arrest and continued detention are unlawful because they were imposed without a lawful statutory basis, without the procedures required by regulation, and without constitutionally adequate notice and opportunity to be heard.

40. The governing constitutional principles are settled. The Fifth Amendment prohibits the Government from depriving any person of liberty without due process of law, and "[f]reedom 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 v. Davis*, 533 U.S. 678, 690 (2001). That protection extends to noncitizens. *Id.* at 693. And when executive detention is imposed outside the ordinary criminal process, habeas review must be searching and real. See *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Boumediene v. Bush*, 553 U.S. 723, 783 (2008). The Second Circuit has likewise held that immigration detention implicates the most significant liberty interest and that challenges to the constitutionality of detention procedures are properly brought in habeas. See *Velasco Lopez v. Decker*, 978 F.3d 842, 850–54 (2d Cir. 2020); *Hechavarria v. Sessions*, 891 F.3d 49, 53–55 (2d Cir. 2018). As Judge Broderick recently summarized in granting habeas relief in a supervision-revocation case, "[i]f a detention is the result of an agency violating their own regulations, then the Government may not have provided the detainee with the process that they are due under the constitution and the writ can issue." *Ndoye v. Joyce*, No. 25-CV-8856 (VSB), slip op. at 5 (S.D.N.Y. Feb. 6, 2026) .

41. We believe the DHS may later contend that Petitioner is detained under 8 U.S.C. § 1231 because of a prior removal order, order of supervision, or purported reinstatement; that theory does not excuse the complete absence of contemporaneous process. Section 1231, however, is not "a free-roaming right to

arrest and detain people any time [the Government] sees fit." *Diallo v. Joyce*, No. 25-CV-9909 (AS), slip op. at 3 (S.D.N.Y. Dec. 23, 2025) . As *Diallo* explained, § 1231(a)(6) authorizes only a period of continued detention "beyond the removal period"; it does not authorize the Government to seize a person anew, years later, without showing how the statutory and regulatory predicates for such custody have been met. *Id.* at 2–5 . Judge Subramanian therefore rejected the Government's claim of broad post-order detention power and held that the Government "can't detain anyone it wants. It needs a statutory basis to arrest and detain people." *Id.* at 2–3 . That reasoning applies here.

42. If Respondents invoke § 1231, they must still establish, with actual records, that a valid final order exists, that the claimed post-order detention framework truly applies, and that the procedures governing revocation of release, re-detention, or reinstatement were followed. Absent that showing, § 1231 cannot be assumed.

43. Nor may Respondents cure a lack of statutory authority by producing, after the fact, a theory of reinstatement under 8 U.S.C. § 1231(a)(5). Reinstatement is governed by 8 C.F.R. § 241.8, which requires immigration officers to determine, at minimum, the existence of a prior removal order, the identity of the person arrested, and illegal reentry after removal. See 8 C.F.R. § 241.8(a); *Garcia-Villeda v. Mukasey*, 531 F.3d 141, 149–50 (2d Cir. 2008). At the emergency-habeas stage, where the Government has produced no administrative file, no operative prior order, and no reinstatement packet, the Court cannot assume those determinations were made. Indeed, the limited records in similar cases show why the assumption would be unwarranted.

44. Petitioner therefore pleads in the alternative that if Respondents later invoke reinstatement, any such reinstatement had to be lawfully accomplished before or at the time of arrest and cannot retroactively validate detention.

45. The New York cases confirm that where supervision or post-order custody is invoked, notice and an opportunity to respond are not optional. In *Funes Gamez v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896 (S.D.N.Y. Nov. 24, 2025), Judge Engelmeyer held that ICE violated its regulations and due process where a noncitizen reporting for a scheduled check-in was "summarily informed that she would

be taken into custody, without the notice or prompt informal interview that ICE's regulations require." The court found that "the manner in which Funes was taken into custody on September 8, 2025 violated ICE's regulations and due process, and orders her immediate release."

46. Likewise, in *Zhu v. Genalo*, No. 1:25-cv-06523 (JLR), 798 F. Supp. 3d 400 (S.D.N.Y. 2025), the Government acknowledged that the petitioner did not receive notice of revocation or an interview, and Judge Rochon rejected the Government's effort to detain first and explain later. The court emphasized that petitioner was not claiming a right to perpetual supervision, but "a right not to be redetained without appropriate process," and held that the governing regulations required that "[a] copy of any decision . . . to detain an alien shall be provided to the detained alien," with reasons stated, because failure to provide such notice "thwarts his ability to contest the revocation."

47. Judge Rochon further held that even apart from the regulations, minimal due process required notice and an informal interview, because the "almost nonexistent procedural protections" markedly increased the risk of erroneous deprivation of liberty.

48. *Diallo* drives the same point home in the § 1231 setting. There, the Government conceded that it could not say Diallo had received "the notice and prompt interview required by 8 C.F.R. § 241.4(l)," and the court rejected the Government's attempt to read § 1231 broadly while stripping away the procedural protections that would ordinarily govern re-detention. Judge Subramanian explained that it "defies common sense" to interpret § 1231 to allow redetention of a person never previously detained under supervision while depriving her of "the procedural safeguards that someone like Diallo would have if the government had only followed its own legal mandates." He then relied on *Zhu*'s Mathews analysis, including the recognition that the private liberty interest is weighty, the risk of error is high when protections are "almost nonexistent," and the Government's interests are not undermined by minimal safeguards such as notice and an interview. *Id.* That reasoning applies here whether Respondents later call the custody § 1231 detention, supervision revocation, or reinstatement-based confinement.

49. To the extent Respondents instead invoke 8 U.S.C. § 1225, the same problem remains. Mandatory detention may not be conjured into existence after the fact through shifting theories or contradictory

paperwork. In *Rodriguez-Acurio v. Almodovar*, No. 2:25-cv-6065 (NJC) (E.D.N.Y. Nov. 10, 2025), Judge Choudhury closely examined the Government's effort to characterize detention under § 1225 after the petitioner had been arrested immediately following a credible-fear interview. The court found that the Government's theories were "imprecise and shifting," that its positions were inconsistent, and that those inconsistencies "call into question the basis for [the] detention." The court further noted that although the Government attempted to rely on expedited-removal paperwork, the Form I-860's order section was blank: "Because the 'Order' portion of the form is blank there is no dispute Rodriguez-Acurio was not ordered removed, and this document is accurately described as a 'Notice of Expedited Removal.'" That language is directly relevant to any case in which DHS vaguely suggests a prior expedited-removal history but has not produced an actual operative order. A notice is not the same thing as a valid order, and detention under the post-order framework cannot simply be assumed.

50. *Rodriguez-Acurio* is equally important on the warrant point. There, after the petitioner was seized, she was served with a Form I-200 whose face stated she was arrested under "sections 236 and 287," i.e., the § 1226 framework; yet the Government simultaneously claimed in declaration form that she had been taken into custody pursuant to § 1225(b)(1). Judge Choudhury highlighted that the declaration was "[d]irectly contradicting the face of the warrant attached to his declaration," and the court treated those contradictions as central to why the detention could not stand. The court also held that "[n]o 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," and that detention without "any notice or opportunity to be heard" violated due process. Thus, if Respondents later produce a warrant that post-dates the seizure, or a warrant that on its face corresponds to a different statutory framework than the one argued in court, those contradictions do not cure the original defect; they expose it.

51. The same due process defect exists if Respondents later argue that a warrant existed somewhere in the system even though no warrant was presented or disclosed at the time of arrest. The petition should therefore expressly plead, in the alternative, that Petitioner was arrested without any judicial warrant and, on information and belief, without any executed administrative warrant being presented to

Petitioner or counsel at the time liberty was first restrained. If a Form I-200, I-205, or other document was generated only during subsequent processing, that later paperwork cannot retroactively create authority that was absent at the moment of seizure. The New York cases repeatedly reject precisely that logic. See *Zhu*, 798 F. Supp. 3d 400; *Funes*, 2025 WL 3263896; *Diallo*, No. 25-CV-9909; *Ndoye*, No. 25-CV-8856. In short, Respondents may not arrest first, separate the detainee from counsel and family, withhold the file, and then search for a legal basis later.

52. Nor may Respondents avoid the procedural problem by claiming that some undocumented internal review occurred. In *Ndoye*, Judge Broderick construed 8 C.F.R. § 241.4(l) as a unified revocation framework and rejected the Government's repeated attempt to parse the rule in a way that afforded less process than the regulation required. The court explained that when liberty is restrained through revocation of supervision, the regulation entrusts revocation decisions to specified officials and requires the procedures laid out in the regulation as a whole. That matters here because, at the outset of an emergency habeas case, the Government often has not shown who made the decision, whether the person was authorized, what documents were reviewed, or whether the procedural steps required by the regulation were actually followed. The absence of that showing is not a trivial gap. It is one of the reasons the writ issues.

SHOULD ICE CLAIM THAT IT IS DETAINING HIM UNDER SECTION 1231, OR EXPEDITED REMOVAL UNDER 1225, THEN THE FOLLOWING ARGUMENTS APPLY IN THE PETITIONER'S APPLICATION FOR RELEASE

53. Petitioner therefore pleads in the alternative that, if Respondents later claim detention under § 1231 based on a prior removal order, order of supervision, warrant of removal, or reinstatement, the same custody principles apply. At a minimum, Respondents were required to possess and rely upon the operative administrative record, to identify the correct statutory basis for detention, to comply with the governing regulations, and to afford Petitioner constitutionally adequate notice and an opportunity to be heard. Based on the information currently available, those steps were not taken. No valid warrant or reinstatement paperwork has been shown to counsel; no administrative file has been produced; no contemporaneous custody determination has been disclosed; and no meaningful process has been

afforded.

54. Petitioner further pleads in the alternative that, if Respondents later contend that Petitioner was on some form of supervision or conditional release, any revocation of that status was unlawful because Petitioner was not given the basic process that the regulations and the Due Process Clause require. As *Funes*, *Zhu*, *Diallo*, and *Ndoye* demonstrate, at minimum that process includes contemporaneous notice of the reasons for redetention and a meaningful opportunity to respond. See *Funes*, No. 25 Civ. 7429, 2025 WL 3263896; *Zhu*, 798 F. Supp. 3d 400; *Diallo*, No. 25-CV-9909; *Ndoye*, No. 25-CV-8856. The Government may enjoy discretion in the immigration context, but it may not dispense with the procedures that cabin that discretion when liberty is at stake.

55. Petitioner also pleads, in the alternative, that if Respondents later assert a prior expedited-removal order as the basis for detention or reinstatement, Respondents must prove the existence of an actual, operative order, not merely an inadmissibility notice or other incomplete form. *Rodriguez-Acurio* demonstrates that where the form's order section is blank, the document is not an order at all. And where the Government cannot demonstrate that the operative order existed and took legal effect, it cannot rely on post-order detention authority.

56. Petitioner further alleges that, to the extent any statements were obtained from him during the arrest or immediately preceding it, those statements were taken during an unlawful seizure imposed without warrant, without notice of the legal basis for custody, and without disclosure of the records or orders purportedly authorizing that seizure. If Respondents later rely on such statements to establish any element of reinstatement, removability, or detention authority, Petitioner reserves all rights to challenge the admissibility and legal sufficiency of those statements and to seek suppression where appropriate.

57. Finally, if the Respondents' fail to produce the administrative record that itself is highly significant in habeas. The habeas statute requires the respondent to make a return certifying the true cause of detention, and without the underlying administrative file the Court cannot determine whether the statutory requirements for detention were satisfied. Here, too, the absence of the file prevents meaningful testing of whether there was any valid prior order, whether any reinstatement occurred in

compliance with 8 C.F.R. § 241.8, whether any warrant was actually operative at the time of arrest, and whether the detention was placed under the correct statutory framework.

58. In sum, whether Respondents ultimately invoke § 1225, or § 1231, the same principle governs: the Government may not deprive a person of liberty without identifying and proving a lawful statutory basis for custody, without complying with its own regulations, and without constitutionally adequate process. It may not seize first and justify later. It may not rely on an order not produced, a reinstatement not shown, a warrant not presented, or an administrative file not reviewed. And it may not repair those defects through shifting theories after habeas jurisdiction has attached. Under the Supreme Court's due process cases, the Second Circuit's habeas and detention precedents, and the recent decisions of the Southern and Eastern Districts of New York and the District of New Jersey, Petitioner's detention is unlawful unless and until Respondents can prove otherwise with competent, contemporaneous records and procedures they have not yet produced. See *Zadvydas*, 533 U.S. at 690; *Hamdi*, 542 U.S. at 529; *Boumediene*, 553 U.S. at 783; *Velasco Lopez*, 978 F.3d at 850–54; *Hechavarria*, 891 F.3d at 53–55; *Funes*, 2025 WL 3263896; *Zhu*, 798 F. Supp. 3d 400; *Diallo*, No. 25-CV-9909; *Ndoye*, No. 25-CV-8856; *Rodriguez-Acurio*, No. 2:25-cv-6065; *Polat*, Civil Action No. 2:25-cv-16893, 2025 U.S. Dist. LEXIS 260802.

59. Accordingly, Petitioner respectfully alleges that his arrest and detention are unlawful under the Fourth Amendment, the Fifth Amendment, the INA, and the governing regulations; that he is entitled to immediate habeas relief unless Respondents promptly produce the complete administrative record and establish a lawful basis for custody; and that, at minimum, he is entitled to whatever contemporaneous notice, individualized custodial determination, and opportunity to be heard the Constitution and the governing statutory framework require.

60. Because this Petition is being filed on an emergency basis and before Respondents have produced the administrative file, Petitioner cannot yet know the full immigration history, the precise custodial theory Respondents will eventually assert, or the documents on which they will rely. Petitioner therefore expressly pleads all claims and factual allegations herein in the alternative and upon information and

belief where necessary, and reserves the right to amend, supplement, or conform the pleadings to the evidence as soon as Respondents disclose the administrative record, custodial documentation, and all records relating to arrest, detention, supervision, revocation, removal, reinstatement, parole, or any other asserted basis for custody.

61. More specifically, Petitioner reserves the right to amend this Petition to assert, develop, or refine any argument that Respondents' detention theory rests on an invalid or non-operative prior order; an improperly executed or legally insufficient reinstatement; an unlawful revocation of supervision or parole; a misclassification under § 1225 rather than § 1226; a post-order detention theory under § 1231 not supported by statute or regulation; an administrative warrant obtained, executed, or served only after arrest; or any other defect revealed by the administrative file, declarations, or return. No omission in this initial emergency filing should be construed as a waiver of any statutory, regulatory, constitutional, evidentiary, suppression, or remedial argument arising from facts not yet disclosed to Petitioner.

62. Petitioner further alleges that the Government's withholding of the administrative record, coupled with the likelihood of transfer or rapid movement through multiple facilities, substantially impairs Petitioner's ability to identify the true legal basis for detention and to test Respondents' assertions in real time. For that reason as well, Petitioner respectfully submits that any uncertainty created by Respondents' failure to produce the file should be construed against Respondents, not against the detained person whose liberty they have restrained.

63. Accordingly, Petitioner respectfully requests that this Court construe this emergency Petition liberally to encompass all viable statutory and constitutional challenges to the legality of present custody, prohibit transfer or removal pending adjudication, require prompt production of the complete administrative record, and grant immediate release or such other relief as the Court deems just and proper if Respondents cannot promptly establish, with competent and contemporaneous evidence, a lawful basis for arrest and detention.

THE APPLICABLE LEGAL FRAMEWORK

THIS CASE

64. This is an emergency habeas case about a basic constitutional and statutory question. *Can ICE arrest a noncitizen in the bathroom at an airport after check-in for a flight, detain, search, and arrest him without probable cause or a valid arrest warrant? And can DHS then keep detaining him without a hearing and without complying with statutory and constitutional safeguards?*

65. As in many other cases, DHS will likely produce an after-created arrest warrant and claim the arrest was based on it, even though the warrant was generated after the arrest and was not previously issued or approved through the chain of command as the statute and regulations require.

66. The law says that civil immigration detention is a grave deprivation of liberty and that due process requires meaningful safeguards at the moment the Government decides to arrest and detain someone. Courts in this District have repeatedly ordered relief under habeas where ICE detained people without making the individualized assessment that § 1226(a) and the regulations require, and where ICE tried to justify detention after the fact instead of through contemporaneous process. That includes *Lopez Benitez*, *Barco Mercado*, *Kelly*, *Valdez*, *Chipantiza-Sisalema*, and *Gonzalez*.

67. Petitioner therefore respectfully asks this Court to act now: to prevent transfer, compel disclosure of the key documents, require Petitioner's production before the Court, and order immediate release.

JURISDICTION AND VENUE

68. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody under the color of United States authority and challenges the legality of that custody as unconstitutional and in violation of statute and regulation.

69. The venue is proper in the EASTERN DISTRICT OF NEW YORK because the Petitioner was seized in New York, was detained, and processed at ICE facilities within this District, and is still currently at the Metropolitan Detention Center, MDC, Brooklyn, NY. Respondents direct, control, and administer Petitioner's detention and transfer decisions in and from this District.

70. This Court has authority to issue a temporary restraining order and preliminary injunctive relief "as law and justice require," including to prevent transfer that would impair the Court's jurisdiction and ability to order effective habeas relief.

THE PARTIES

71. JUAN CARLOS LOPEZ MENJIVAR S is a resident of Brentwood, NY.

72. Respondent Ken Genalo is the Field Director, Enforcement & Removal Operations of ICE, and is a legal custodian of Petitioner.

73. Respondent Todd Lyons is the Acting Director of ICE and is responsible for ICE detention policies and practices.

74. Respondent Markwayne Mullin is the Secretary of the Department of Homeland Security and is responsible for DHS policies and enforcement practices affecting detention

75. Respondent Todd Blanche is the Acting Attorney General of the United States and is sued in his official capacity in connection with the federal custody at issue.

ARGUMENT

CLAIM ONE

THE WARRANTLESS ARREST AND DETENTION AT THE PETITIONER AT JFK AIRPORT WITHOUT A CONTEMPORANEOUS, INDIVIDUALIZED CUSTODY DETERMINATION VIOLATES THE FOURTH AMENDMENT, THE FIFTH AMENDMENT, AND THE IMMIGRATION AND NATIONALITY ACT.

76. If DHS claims that it is detaining him under 1231, we repeat all the arguments made above in the Preface section of this habeas petition.

77. If Respondents claim detention under § 1231 based on a prior removal order, order of supervision, warrant of removal, or reinstatement, the same statutory and constitutional custody principles apply. At a minimum, Respondents were required to possess and rely upon the operative administrative record, to identify the correct statutory basis for detention, to comply with the governing regulations, and to afford Petitioner constitutionally adequate notice and an opportunity to be heard. Based on the information currently available, those steps were not taken. No valid warrant or reinstatement paperwork has been shown to counsel; no administrative file has been produced; no contemporaneous custody determination has been disclosed; and no meaningful process has been afforded.

78. Petitioner further pleads in the alternative that, if Respondents later contend that Petitioner was on some form of supervision or conditional release, any revocation of that status was unlawful because Petitioner

was not given the basic process that the regulations and the Due Process Clause require. As *Funes*, *Zhu*, *Diallo*, and *Ndoye* demonstrate, at a minimum that process includes contemporaneous notice of the reasons for redetention and a meaningful opportunity to respond. See *Funes*, No. 25 Civ. 7429, 2025 WL 3263896; *Zhu*, 798 F. Supp. 3d 400; *Diallo*, No. 25-CV-9909; *Ndoye*, No. 25-CV-8856. The Government may enjoy discretion in the immigration context, but it may not dispense with the procedures that cabin that discretion when liberty is at stake.

79. Petitioner also pleads, in the alternative, that if Respondents later assert a prior expedited-removal order as the basis for detention or reinstatement, Respondents must prove the existence of an actual, operative order, not merely an inadmissibility notice or other incomplete form. *Rodriguez-Acurio* demonstrates that where the form's order section is blank, the document is not an order at all. And where the Government cannot demonstrate that the operative order existed and took legal effect, it cannot rely on post-order detention authority. See *Polat*, 2025 U.S. Dist. LEXIS 260802; *Rodriguez-Acurio*, No. 2:25-cv-6065.

80. On Petitioner's account, ICE did not arrest him at the border, during an inspection for admission, or at any customs checkpoint. It arrested him after he had already checked in for a domestic flight, entered the secure interior of John F. Kennedy International Airport, and gone into a restroom while waiting to board. That setting matters. This was not an admission-related encounter. Congress separately gave immigration officers a limited warrantless-search power as to persons "seeking admission" to the United States, 8 U.S.C. § 1357(c), which underscores that the special border-search power does not fit a domestic traveler already inside the terminal on an outbound domestic trip. (Legal Information Institute)

1. The closest airport case is **Diallo v. Joyce**. There, ICE removed the petitioner from the security line at LaGuardia Airport and detained her under 8 U.S.C. § 1231. Judge Subramanian held the detention unlawful because the Government lacked a valid statutory basis, failed to comply with its own regulations, and violated due process. *Diallo v. Joyce*, No. 25-CV-9909 (AS), slip op. at 1–8 (S.D.N.Y. Dec. 23, 2025). That reasoning applies a fortiori here. If it was unlawful in *Diallo* to seize a traveler from the security line without notice or process, it is even more coercive to follow Petitioner into a

restroom inside the secure area of JFK, after check-in for a domestic flight, and seize him there without contemporaneous process.

2. The airport-security cases do not rescue Respondents. In **United States v. Albarado**, a Second Circuit case arising from JFK, the court upheld only a narrowly limited airport-security search justified by the urgent need to keep weapons off airplanes. 495 F.2d 799 (2d Cir. 1974). The court stressed that the purpose of that search regime is "not to catch criminals, but rather to keep armed hijackers from getting on airplanes." *Id.* It also warned that the airport-search program could become unconstitutional if it "degenerate[d] from the original search for weapons to a general search for contraband." *Id.* In **City of Indianapolis v. Edmond**, the Supreme Court preserved the validity of airport and building searches only because the need there is public safety, while reaffirming that checkpoints whose primary purpose is ordinary law enforcement or general crime control violate the Fourth Amendment absent individualized suspicion. 531 U.S. 32 (2000). DHS therefore may not convert TSA's aviation-security apparatus into a civil-immigration dragnet. (Justia Law)
3. That is what Petitioner alleges happened here. On information and belief, DHS used identity information available through the check-in or TSA process to locate Petitioner inside JFK and then chose to arrest him in a restroom in the secure area. That has nothing to do with the narrow anti-hijacking rationale recognized in *Albarado*. It is ordinary civil immigration enforcement piggybacking on a mandatory airport-security system. Under *Edmond*, that kind of programmatic use of a checkpoint for ordinary law enforcement cannot be justified merely because it occurred in an airport. (Justia Law)
4. Nor can the Government plausibly characterize the restroom encounter as casual, voluntary, or noncustodial. Under **United States v. Mendenhall**, a seizure occurs when, in view of all the circumstances, a reasonable person would not believe he was free to leave. 446 U.S. 544, 554 (1980). Under **Florida v. Royer**, an airport encounter becomes a seizure when officers direct a traveler away from the concourse, retain control over his travel, and do not indicate that he is free to depart. 460 U.S. 491, 501–02 (1983). Here, a traveler who is confronted by immigration officers in a restroom inside the secure area of JFK, prevented from continuing to the gate, and taken into custody is not engaged in a

consensual conversation. He has been seized. What began, at most, as an airport-presence encounter became a full custodial restraint on liberty. (Justia Law)

5. The present record, as alleged, also shows that no arrest warrant was shown to Petitioner when his liberty was first restrained. That omission matters. If DHS meant to arrest him as a pre-final-order detainee, the governing regulation contemplates arrest under **Form I-200, Warrant of Arrest**. 8 C.F.R. § 236.1(b)(1). If DHS instead proceeded without a warrant, 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) required more than a database hit or a bare reference to an old file. They required reason to believe Petitioner was in violation of immigration law and reason to believe he was likely to escape before a warrant could be obtained. And at the time of arrest, the arresting officer was required, as soon as practical and safe, to identify himself as an immigration officer authorized to arrest and to state that Petitioner was under arrest and the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). On Petitioner's account, those things did not happen. (Legal Information Institute)

6. The facts alleged cut directly against any claim that Petitioner was "likely to escape before a warrant can be obtained." 8 U.S.C. § 1357(a)(2). DHS allegedly knew who he was before the arrest, tracked him through JFK after check-in, waited until he was inside the secure area, and then chose the time and place of seizure. Those are not exigent circumstances. They are the opposite of exigency. They show advance identification, advance targeting, and ample time to secure an administrative arrest warrant if the agency believed it had lawful grounds to arrest him. *Diallo* is especially useful here because Judge Subramanian rejected the idea that § 1231 gives ICE a "free-roaming right to arrest and detain people any time it sees fit." *Diallo*, No. 25-CV-9909 (AS), slip op. at 3. As that court put it, "The government can't detain anyone it wants. It needs a statutory basis to arrest and detain people." *Id.* at 2–3. (Legal Information Institute)

7. If the arrest was warrantless, the agency's obligations did not end once Petitioner was isolated in the restroom and questioned. They began. Under 8 C.F.R. § 287.3(a), an alien arrested without a warrant under § 1357(a)(2) must be examined by an officer other than the arresting officer, absent narrow unavailability circumstances. Under § 287.3(c), he must be advised of the reasons for his arrest, the right

to representation at no expense to the Government, and that any statement may be used against him in a later proceeding. Under § 287.3(d), a custody determination must be made within forty-eight hours, absent emergency or extraordinary circumstances, including whether he will remain in custody or be released and whether a notice to appear and warrant of arrest will issue. 8 C.F.R. § 287.3(a), (c), (d). The regulation thus recognizes that post-arrest questioning is custodial and process-laden; it is not some informal, noncustodial chat. The absence of any prompt examination, advisals, or contemporaneous custody determination is therefore not a technicality. It goes to the lawfulness of the arrest itself. (Legal Information Institute)

8. If Respondents now contend that Petitioner is detained under **8 U.S.C. § 1226**, the problem remains. The regulations contemplate a formal arrest instrument and an initial custody determination. See 8 C.F.R. § 236.1(b)(1), (d)(1). After an initial custody determination by the district director, the respondent may seek amelioration before the immigration judge, who may detain, release, or set bond. 8 C.F.R. § 236.1(d)(1). On Petitioner's account, no such contemporaneous custody determination was given, no lawful basis was disclosed, and no process was afforded at the moment liberty was first restrained at JFK. (Legal Information Institute)

9. If Respondents instead invoke **8 U.S.C. § 1231**, *Diallo* forecloses any argument that § 1231 is a blank check to arrest a person at an airport years after an order allegedly became final. *Diallo* held that § 1231(a)(6) authorizes only continued detention beyond the removal period; it is not a fresh arrest power that ICE may deploy whenever it later chooses to jail someone. *Diallo*, No. 25-CV-9909 (AS), slip op. at 2–5. That reading is consistent with **Zadvydas v. Davis**, which explains that after entry of a final order the Government ordinarily removes the person during the ninety-day removal period and only "subsequently" may continue detention under § 1231(a)(6), subject to constitutional limits. 533 U.S. 678, 682–90 (2001). It is also consistent with **Johnson v. Guzman Chavez**, which treated § 1231 as the detention provision governing persons who are in the post-final-order posture—not as a free-floating arrest authority detached from the statutory removal-period framework. 594 U.S. 523, 542–44 (2021). On this record, DHS has not produced the operative order, has not shown that a valid final order existed

and remained executable, and has not shown that any contemporaneous post-order custody review occurred. (Legal Information Institute)

10. Even assuming arguendo that some form of post-order re-detention authority could apply, the agency still had to follow **8 C.F.R. § 241.4**. That regulation requires that a copy of any decision to detain be provided to the detainee, and that a decision to retain custody briefly state the reasons for continued detention. 8 C.F.R. § 241.4(d). Upon revocation of release, the detainee must be notified of the reasons for revocation and afforded an initial informal interview promptly after return to custody. Id. § 241.4(l)(1). Courts in this Circuit have treated those protections as mandatory and unified, not optional. See *Funes Gamez v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896, at *14–25 (S.D.N.Y. Nov. 24, 2025); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 408–14 (S.D.N.Y. 2025); *Zhang v. Genalo*, No. 25-CV-06781 (NRM), 2025 WL 3733542, at *10–16 (E.D.N.Y. Dec. 28, 2025); *Ndoye v. Joyce*, No. 25-CV-8856 (VSB), slip op. at 6–10 (S.D.N.Y. Feb. 6, 2026); *Zhang v. Bondi*, No. 25-CV-10418 (JPO), slip op. at 6–9 (S.D.N.Y. Jan. 7, 2026). And where liberty is at stake, agencies must follow their own procedures. *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Singh v. U.S. Dep't of Just.*, 461 F.3d 290, 296 (2d Cir. 2006); *Montilla v. INS*, 926 F.2d 162, 164 (2d Cir. 1991). On Petitioner's account, none of that happened here. (Legal Information Institute)

11. *Diallo* relied heavily on *Zhu*'s due-process analysis, and that analysis fits this case exactly. Applying **Mathews v. Eldridge**, 424 U.S. 319 (1976), those cases recognized that the liberty interest at stake is freedom from imprisonment; that "almost nonexistent procedural protections" sharply increase the risk of erroneous detention; and that the Government's interests are not impaired by basic safeguards such as notice and an informal interview. *Zhu*, 798 F. Supp. 3d at 413–14; *Diallo*, No. 25-CV-9909 (AS), slip op. at 6–8. The Fifth Amendment applies no less here. See *Zadvydas*, 533 U.S. at 690–93; *Velasco Lopez v. Decker*, 978 F.3d 842, 850–54 (2d Cir. 2020). Petitioner's seizure in a restroom inside JFK, without notice, without a shown warrant, without a prompt examination by a non-arresting officer, without a contemporaneous custody determination, and without any prompt opportunity to contest the

basis for detention created the precise risk of erroneous deprivation that *Mathews* condemns. (Legal Information Institute)

12. Nor may DHS cure these defects by producing forms later. *Funes*, *Zhu*, *Zhang*, and *Diallo* all reject the detain-first, explain-later model. In *Funes*, the court held that notice given only after the detainee had been separated from family and counsel, placed in a cell, and put on track for transfer out of state did not satisfy due process. 2025 WL 3263896, at *22–25. In *Zhang*, the court held that even a later-produced notice was insufficient where it did not adequately state the reasons for detention and the agency could not reliably prove that any interview occurred. *Zhang*, No. 25-CV-10418 (JPO), slip op. at 6–9. The same principle applies here. The legality of this arrest rose or fell at JFK, when officers seized Petitioner in the restroom and prevented him from boarding his domestic flight. It cannot be retroactively supplied by paperwork generated afterward.

13. The unresolved validity of the asserted removal order only sharpens the constitutional problem. DHS appears to be relying on an old in absentia order, yet it has not produced the Notice to Appear, the hearing notice, or the order itself. Congress required that a notice to appear state the time and place of proceedings. 8 U.S.C. § 1229(a)(1)(G)(i). An in absentia order is valid only if the Government proves the written notice required by 8 U.S.C. § 1229(a)(1) or (2). 8 U.S.C. § 1229a(b)(5)(A). And such an order may be rescinded at any time if the noncitizen did not receive the required notice. Id. § 1229a(b)(5)(C)(ii). **Pereira v. Sessions** and **Niz-Chavez v. Garland** confirm that a document lacking the statutorily required time-and-place information is not a valid notice to appear for the statutory purposes addressed in those cases. 585 U.S. 198, 211–12 (2018); 593 U.S. 155, 161–62 (2021). The Court need not now decide the ultimate validity of the old order to conclude that DHS lacked authority to presume, at the moment of arrest inside JFK, that it possessed a valid and executable final order when it had not even produced the operative papers. (Legal Information Institute)

14. In short, this was not a lawful border inspection, not a permissible extension of TSA screening, and not a consensual airport encounter. It was a warrantless interior arrest at JFK of a domestic traveler in a restroom inside the secure area, carried out without the process required by the INA, the regulations, and

the Constitution. Under *Diallo*, the Government needed a statutory basis, compliance with its own rules, and due process before depriving Petitioner of his liberty. It had none. The arrest and ensuing detention were therefore unlawful. The proper remedy is release, or at minimum an order requiring Respondents to produce forthwith the operative administrative record, identify the exact statutory basis for detention, certify the true cause of custody, and refrain from transfer or removal pending judicial review.

CLAIM THREE

PETITIONER'S WARRANTLESS SEIZURE AND ARREST VIOLATED THE FOURTH AMENDMENT, 8 U.S.C. § 1357(a)(2), AND THE GOVERNING IMMIGRATION ARREST REGULATIONS

The Fourth Amendment Applies Fully to Interior Civil Immigration Arrests

81. The Fourth Amendment applies fully to civil immigration arrests in the interior of the United States. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984). The Second Circuit has recognized that "[t]he Fourth Amendment's protections extend to all persons within the United States, including aliens." *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006). So warrantless civil immigration arrests are limited by both the Constitution and the INA.

82. That means the DHS cannot seize first and explain later. If ICE officers seized Petitioner on the street without presenting a warrant, without articulating probable cause, and without identifying a lawful basis for the seizure at the time, the arrest was unreasonable under the Fourth Amendment and outside the statute. See *Dunaway v. New York*, 442 U.S. 200, 208–09 (1979); *Beck v. Ohio*, 379 U.S. 89, 91, 96 (1964).

83. Because the initial seizure was unlawful, the detention that followed is unlawful too.

Congress Created a Warrant-First Rule for Interior Immigration Arrests

84. Congress did not create a free-floating power for immigration officers to seize people in the interior and sort out the authority later. The structure of the arrest statutes matters. Under 8 U.S.C. § 1226(a), a person in the interior ordinarily is arrested "[o]n a warrant issued by the Attorney General." The same section then provides for detention, bond, or conditional parole. So the normal model is arrest on a warrant first, followed by custody procedures.

85. The regulations confirm that model. Under 8 C.F.R. § 236.1(b)(1), a person may be arrested and taken into custody under a Form I-200 warrant, and that warrant may be issued only by the officers listed in 8 C.F.R. § 287.5(e)(2), and served only by the officers listed in § 287.5(e)(3). In short, the regulations require advance issuance by designated officers and advance authorization before liberty is restrained.

86. The Supreme Court described the same structure in *Arizona v. United States*. There, the Court explained that Congress created a "full set of standards" governing immigration arrest authority and that the no-warrant authority is "more limited." 567 U.S. 387, 407–08 (2012). Officers may arrest without a warrant only if they have reason to believe the person is removable and likely to escape before a warrant can be obtained. *Id.* So the warrantless power is the exception, not the default.

The Administrative-Warrant Scheme Requires Prior Authorization, Not Later Papering

87. The warrant rules are not minor technicalities. They are part of the lawful method for making interior immigration arrests. Before an arrest on a warrant, DHS regulations require prior issuance of Form I-200 by a designated official under 8 C.F.R. § 287.5(e)(2). That authority is concentrated in supervisory and specially delegated officers. The point is to require review before arrest, not afterward.

88. The regulations also limit who may make a warrantless arrest at all. Under 8 C.F.R. § 287.5(c)(1), only designated officers may exercise that power. And 8 C.F.R. § 287.8(c)(2) says that such officers may arrest without warrant only if they have reason to believe the person is removable and "is likely to escape before a warrant can be obtained." The same regulation adds that a warrant "shall be obtained in every instance where the person is not likely to escape before a warrant can be obtained." 8 C.F.R. § 287.8(c)(2)(ii). That language is mandatory.

89. The regulations also require basic notice at the time of arrest. The officer must identify himself or herself as an immigration officer and state that the person is under arrest and the reason for the arrest. 8 C.F.R. § 287.8(c)(2)(iii). Where officers do not show a warrant, do not state the basis for arrest, and do not comply with these rules, the arrest is not merely sloppy. It is unlawful.

90. That is why later-issued paperwork cannot save an airport arrest that was unlawful when it happened. The sequence matters. The warrant must come first. A later I-200 does not prove compliance. It proves the opposite.

A Warrantless Immigration Arrest Required Probable Cause and a Real Escape-Risk Basis

91. Even if there were a lawful initial encounter, the DHS still needed probable cause before turning it into an arrest. The constitutional rule is basic: probable cause must exist "at the moment the arrest was made." *Beck*, 379 U.S. at 96. Officers cannot detain first and then use later-acquired facts to fill in the missing basis.

92. Congress wrote that same rule into 8 U.S.C. § 1357(a)(2). That section allows a warrantless arrest only when the officer has "reason to believe" the person is removable and "is likely to escape before a warrant can be obtained." Courts have long treated "reason to believe" in this context as equivalent to probable cause. See *Tejeda-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980). The Second Circuit's reasoning is consistent. In *Ojeda-Vinales v. INS*, the court explained that officers may investigate first, then arrest once probable cause exists, not the other way around. 523 F.2d 286, 287–88 (2d Cir. 1975).

93. The second part of § 1357(a)(2) matters just as much. Even if probable cause existed, officers still could not make a warrantless arrest unless they also had reason to believe the person was likely to escape before a warrant could be obtained. Congress used "and," not "or." The regulations repeat that same structure and say a warrant "shall be obtained" whenever the person is not likely to escape before one can be secured. 8 C.F.R. § 287.8(c)(2)(ii).

94. So if ICE had neither a valid preexisting warrant nor concrete facts showing probable cause and escape risk at the moment of arrest, the seizure was unlawful under both the Fourth Amendment and the statute.

Later Paperwork Cannot Cure the Defect

95. DHS may try to rely on facts learned after arrest or on later-issued documents. But that argument fails. Beck holds that an arrest is judged by what officers knew "at the moment the arrest was made." 379 U.S. at 96. And United States v. Di Re holds that an arrest "is good or bad when it starts and does not change character from its success." 332 U.S. 581, 595 (1948).

96. That rule is even stricter here because the regulations already tell ICE what to do. If there is no escape risk, get a warrant first. If DHS instead says this was a warrantless arrest, then it must prove that both elements of § 1357(a)(2) existed at the time of arrest. It cannot switch theories in litigation to rescue a defective seizure.

97. The post-arrest regulations do not help the DHS either. Under 8 C.F.R. § 287.3, a person arrested without a warrant must be examined by an officer other than the arresting officer unless no other qualified officer is available, and a custody decision must then be made. Those are safeguards for an already lawful warrantless arrest. They do not create arrest authority where none existed.

The Record Alleged Here Shows Noncompliance with the Required Arrest Protocol

98. Applying the law to the facts alleged here shows why the arrest was unlawful. First, ICE did not proceed on a valid administrative warrant issued in advance by an authorized officer under 8 U.S.C. § 1226(a), 8 C.F.R. § 236.1(b)(1), and 8 C.F.R. § 287.5(e)(2).

99. The officers lacked probable cause to believe Petitioner was removable at the moment of arrest. The Constitution and § 1357(a)(2) do not allow officers to seize first and determine legal status later. *Beck*, 379 U.S. at 96; *Ojeda-Vinales*, 523 F.2d at 287–88.

100. ICE did not satisfy the separate "likely to escape" element. Nothing suggests officers could not have used the normal warrant process. To the contrary, the regulations assume they should have done so unless there was real exigency.

101. Because the arrest was made without a warrant and outside the narrow conditions of § 1357(a)(2), the seizure was not just unreasonable. It was ultra vires. Congress withheld arrest authority unless those conditions were met.

The Proper Remedy Is Habeas Release

102. Habeas relief is appropriate because the defect here is not collateral to detention. It is the foundation of detention. Petitioner was seized without a warrant, outside the narrow authority conferred

by § 1357(a)(2), and without the procedures the INA and the regulations require. That unlawful seizure produced the custody this Court is now reviewing.

103. Because Respondents did not comply with the Constitution, the statute, or the regulations governing immigration arrest authority, the writ should issue and Petitioner should be released.

CLAIM FOUR

FAILURE TO FOLLOW MANDATORY DETENTION REGULATIONS AND PROCEDURES RENDERS CUSTODY UNLAWFUL UNDER ACCARDI

104. Under *Accardi v. Shaughnessy*, 347 U.S. 260 (1954), an agency must follow its own binding regulations, especially where those regulations protect liberty or other important individual rights. When the Government fails to follow those mandatory procedures, its action is unlawful and cannot support continued detention. *Id.* at 267–68.

105. The immigration detention scheme contains mandatory procedural safeguards governing arrest, processing, and custody determinations. These include 8 U.S.C. §§ 1226 and 1357 and regulations such as 8 C.F.R. §§ 236.1 and 287.3. Where ICE does not follow those procedures, particularly in the immediate aftermath of a warrantless arrest, detention is unlawful from the start and cannot be saved by post hoc rationalizations.

106. The Second Circuit has enforced *Accardi* in the immigration context for decades. In *Montilla v. INS*, the court held that agency failure to follow its own regulations requires invalidation of the resulting action where those regulations protect fundamental rights. 926 F.2d 162, 166–69 (2d Cir. 1991). That principle applies here. The regulations governing arrest and detention are not optional internal housekeeping rules. They are part of the legal framework that protects liberty.

107. The recent district cases apply that same idea in the custody setting. In *Lopez Benitez*, Judge Ho held that "before the Government may exercise such discretion to detain a person," § 1226(a) and 8 C.F.R. § 1236.1(c)(8) "require ICE officials to make an individualized custody determination." 795 F. Supp. 3d at 490 . In *Kelly*, Judge Torres held that ICE had to permit the detainee to demonstrate that release would not pose danger or flight risk, and found it undisputed that Kelly was not allowed to do so.

Kelly, 2025 WL 2381591, at *3–4 . In *Huamani*, Judge Liman granted release where there was no process before re-detention. *Huamani*, 2025 WL 3079014, at *8–9 . In *Gopie*, Judge Bulsara held that the custody determination was made after arrest, not before or contemporaneously, and that this violated basic due process requirements. *Gopie*, No. 25-CV-05229 (SJB) (E.D.N.Y. Nov. 13, 2025) .

108. These cases show the same thing. The regulations require timely, individualized custody determinations grounded in lawful authority. Failure to comply with those rules makes detention procedurally defective and constitutionally suspect.

The Regulations Require Process at the Time of Arrest, Not Later

109. Under 8 C.F.R. § 287.3(c), a person arrested without warrant must be examined without unnecessary delay and advised of the reasons for arrest and the right to counsel. Under 8 C.F.R. § 236.1(c), a custody determination must then be made as to detention or release. These are not loose suggestions. They are mandatory procedural safeguards governing the deprivation of liberty.

110. That is why post hoc explanations do not work. DHS cannot ignore its own rules at the time of arrest and then attempt to cure the violation later through a later memorandum, later form, later warrant, or later bond proceeding. Under *Accardi*, the agency must follow the procedures it prescribed when it acts.

111. This point has special force in a case involving 8 U.S.C. § 1357(a)(2). That section gives officers a narrow power to arrest without warrant only when they have reason to believe the person is removable and likely to escape before a warrant can be obtained. If officers make a warrantless arrest and then fail to follow the regulations that govern immediate processing and custody decisions, the statutory and regulatory prerequisites for detention were never satisfied.

Application Here

112. Here, Respondents failed to comply with the mandatory procedures governing Petitioner's arrest and custody determination. Petitioner was subjected to a warrantless arrest without compliance with 8

U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.3. No contemporaneous custody determination was made consistent with 8 C.F.R. § 236.1. No lawful process was provided at or before the deprivation of liberty.

113. These are not technical errors. They go to the heart of DHS's claimed authority to detain. The regulations exist to make sure detention decisions are made lawfully, deliberately, and with minimum safeguards. When those safeguards are ignored, detention is unlawful under *Accardi* and cannot stand.

114. Nor can Respondents cure these violations after the fact. A later-issued document, a delayed custody decision, or a new litigation theory cannot retroactively validate an arrest and detention that were unlawful when they occurred. The law requires compliance at the time of deprivation, not reconstruction later.

115. Accordingly, because Respondents failed to follow the mandatory procedures governing arrest and custody determinations, Petitioner's detention is unlawful under *Accardi*, violates the governing statutes and regulations, and violates the Due Process Clause. Where ICE fails to comply with its own binding rules governing arrest and detention, custody cannot stand. Habeas relief is required.

CLAIM FIVE:

IF RESPONDENTS CANNOT PRODUCE THE ADMINISTRATIVE RECORD DEMONSTRATING LAWFUL AUTHORITY FOR PETITIONER'S ARREST AND DETENTION, THE COURT MUST GRANT THE WRIT.

Petitioner Requests an Order Directing Expedited Production of DHS Custody and Administrative Records

116. Respondents cannot justify Petitioner's continued detention without producing the administrative record that purportedly authorizes his arrest and incarceration. In habeas corpus proceedings, *the Government bears the burden of demonstrating the legal authority for a person's detention*. The writ of habeas corpus exists precisely to assess whether the Executive Branch possesses lawful authority to restrain an individual's liberty. Where the Government cannot demonstrate that authority with competent evidence, the detention cannot stand.

117. If Respondents cannot produce the administrative record demonstrating lawful authority for Petitioner's arrest and detention, the Court must grant the writ. At a minimum, Respondents should be ordered to produce the complete administrative record—including the A-file, any alleged removal order,

any reinstatement determination, and any custody determination—so that the Court may determine whether the detention complies with federal law and the Constitution. Absent such a showing, Petitioner's continued detention is unlawful and he must be released.

118. Although habeas proceedings do not authorize plenary civil discovery, they do require a *real return grounded in the actual record—not a curated narrative constructed by the detaining authority*. The governing statutes make that obligation explicit. Under 28 U.S.C. § 2243, the writ "shall be returned within three days unless for good cause additional time is allowed," and the respondent must certify "the true cause of the detention." 28 U.S.C. § 2243 (emphasis added). Section 2241(c)(3) authorizes relief where a person is "in custody in violation of the Constitution or laws … of the United States," and § 2243 further commands that the Court "summarily hear and determine the facts" and "dispose of the matter as law and justice require."

119. These statutory commands presuppose production of the *actual custody record*. A declaration that paraphrases ICE paperwork while withholding the underlying documents is not a return stating the "true cause" of detention within the meaning of § 2243. Habeas review cannot proceed on summaries, characterizations, or post hoc justifications; it requires the record itself so that the Court—not the Government—can determine the legality of detention.

120. That principle is longstanding. The Supreme Court has made clear that the Government may not defeat habeas review through conclusory assertions. In *Walker v. Johnston*, 312 U.S. 275, 284–87 (1941), the Court rejected reliance on unsupported official representations and held that courts must examine the underlying facts where detention is challenged. Habeas corpus "cuts through all forms and goes to the very tissue of the structure," requiring production of the factual basis for detention so the court may determine its legality. Id. at 284. That command applies with full force here.

Courts Require Production of The Underlying Detention File - Not Summaries

121. Consistent with §§ 2241 and 2243, courts have repeatedly required Respondents to produce the actual documentary record of detention where its legality is challenged.

122. In *Covelli-Chaparro v. Bondi*, No. 2:26-cv-00118 (E.D.N.Y. Jan. 13, 2026), the court ordered a

supplemental submission and required Respondents to confirm that they had provided "all documents demonstrating why Petitioner's detention in ICE custody is lawful." That directive reflects the core requirement that habeas review must be grounded in the full evidentiary record, not selective disclosures.

123. Similarly, in *Minarcaja Concha v. Lyons*, No. 2:25-cv-06695 (E.D.N.Y. Dec. 10, 2025), the court required Respondents to file a detailed supplemental submission addressing the timing, location, and conditions of detention, including records relating to confinement at 535 Federal Plaza—such as sleeping conditions, access to food, medical care, and counsel. The court did not accept generalized assertions; it required the underlying factual record.

124. In *Hernández Lazo v. Noem*, No. 2:25-cv-06639 (E.D.N.Y. Dec. 10, 2025), the court ordered Respondents to produce specific documentary materials, including records related to the petitioner's immigration status (there, TPS termination documents), confirming that habeas courts may compel production of discrete records necessary to adjudicate the legality of detention.

125. And in *Ulloa Montoya v. Bondi*, No. 2:25-cv-06363 (E.D.N.Y. Nov. 24, 2025), the court—while granting TRO relief—directed Respondents to produce *"all immigration forms and records referenced"* in the Government's own submission, recognizing that habeas review cannot proceed where the Government selectively cites documents but withholds them from the Court.

126. Together, these cases establish a consistent rule: when detention is challenged, Respondents must produce the underlying file that purportedly justifies that detention.

The Required Return Includes the Full Arrest and Custody Record

127. To satisfy §§ 2241 and 2243, Respondents must file a complete and non-selective return that includes the full arrest and custody record, including but not limited to:

Form I-200 (warrant of arrest), if any;
Form I-213 (Record of Deportable/Inadmissible Alien);
Form I-286 (Notice of Custody Determination);
Forms I-220A or I-220B (release or supervision documents);
Any detainer, booking, or intake records;
Any custody classification or custody review determinations;
Any supervisory approvals, revocations, or policy-based directives;
Any documentation reflecting the statutory basis invoked for detention;

Any records reflecting when, how, and by whom the custody decision was made.

This is not discovery—it is the *minimum record necessary* for the Court to "determine the facts" as § 2243 requires.

Without The Record, The Court Cannot Discharge Its Statutory Duty

128. Absent production of the underlying file, the Court is left with nothing more than the Government's characterization of its own authority. That is precisely what habeas review forbids. Section 2243 requires the Court to determine the facts—not to accept the Government's account of them.

129. Where, as here, the legality of the arrest, the existence (or absence) of a warrant, the timing of any custody determination, and the statutory basis for detention are all in dispute, the record itself is the case. Without it, meaningful judicial review is impossible.

130. Courts have long recognized that when a party fails to produce evidence within its control that would naturally be expected to support its position, an adverse inference may be drawn that the evidence would not support that party's claims. *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 108–09 (2d Cir. 2002). That principle applies with particular force in habeas proceedings, where the Government alone possesses the detention record.

Expedited Document Production Is Required

131. Finally, the statute imposes a compressed timeline. Section 2243 requires a return within three days absent good cause. That timeline reflects Congress's judgment that unlawful detention must be addressed promptly—not after prolonged delay.

132. Accordingly, the Court should order Respondents to:

a) File a complete return within the timeframe required by § 2243;
b) Produce the full, unredacted custody and arrest record described above; and
c) Certify that the production includes all documents relied upon or referenced in support of detention.

Only with that record can the Court fulfill its statutory obligation to "summarily hear and determine the facts" and "dispose of the matter as law and justice require."

CLAIM SIX

REQUEST FOR ATTORNEYS' FEES UNDER THE EQUAL ACCESS TO JUSTICE ACT

133. Petitioner respectfully requests that this Court expressly preserve Petitioner's right to seek an award of reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C.§ 2412, should Petitioner prevail in this habeas corpus proceeding or obtain the relief requested herein through this Temporary Restraining Order or subsequent order of the Court.

134. EAJA provides that a prevailing party in a civil action against the United States is entitled to an award of attorneys' fees and costs unless the government's position was substantially justified or special circumstances would make an award unjust. See 28 U.S.C. § 2412(d)(1)(A).Immigration habeas corpus proceedings constitute "civil actions" within the meaning of EAJA, and federal courts in this District have recognized that noncitizens who obtain relief from unlawful detention—including release, termination of custody, or injunctive relief—qualify as prevailing parties for purposes of EAJA where the government's conduct is not substantially justified.

135. Here, Petitioner has been subjected to an unlawful seizure and detention without statutory authority and in violation of the Due Process Clause of the Fifth Amendment. The government's actions necessitated the immediate filing of this emergency habeas petition and application for a Temporary Restraining Order to prevent irreparable harm, including continued unlawful detention and the risk of transfer beyond this Court's jurisdiction.

136. Under these circumstances, the government's position lacks substantial justification, and Petitioner should not bear the financial burden of vindicating fundamental constitutional rights. Accordingly, Petitioner respectfully requests that this Court's Temporary Restraining Order expressly provide that nothing in the Court's order shall be construed to waive or limit Petitioner's right to seek attorneys' fees and costs under EAJA, and that Petitioner may move for such fees upon prevailing in this action or obtaining the relief sought, including release from custody or other injunctive relief ordered by the Court.

REQUEST FOR RELIEF

Wherefore, Petitioner respectfully requests that this Court Order the Respondents to Show Cause pursuant to 28 U.S.C. § 2243 why a Temporary Restraining Order should not remain in effect pending swift adjudication of the habeas petition:

a) Prohibiting Respondents from transferring Petitioner outside this District absent further order of this Court
b) directing Respondents to provide reasonable and timely access to counsel, including meaningful and confidential in-person legal visitation;
c) directing Respondents to file, within forty-eight (48) hours, a full return certifying the statutory and factual basis for detention pursuant to 28 U.S.C. § 2243;requiring production, within forty-eight (48) hours of this Order, of all custodial and administrative documents supporting detention, as well as all DHS and ICE custody, detention, and administrative records, with appropriate relief for noncompliance;
d) producing Petitioner forthwith before this Court as necessary to effectuate meaningful habeas review; and upon adjudication of the Petition, granting the writ of habeas corpus and ordering Petitioner's immediate release from unlawful detention;
e) awarding reasonable attorney's fees and costs pursuant to the Equal Access to JusticeAct, 28 U.S.C. § 2412(d), should Petitioner prevail in this action;
f) ordering that Petitioner shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a), that Petitioner be "entitled to release from the unlawful restrictions on his liberty which means, in the circumstances here, restoration of... the status quo ante." *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-cv-5279, 2025 WL 3281514, at *8 (S.D.N.Y. Nov. 25, 2025) (ordering government release petitioner from "restrictions on his liberty imposed as a result of his unlawful [detention]... including the ankle monitor and reporting requirements") and "an injunction barring deprivation [of any] of the [Petitioner's] rights without the requisite procedural protections." *Id. See Ccorihuaman v. Genalo* No. 26-cv-554 (E.D.N.Y. Feb 6, 2026) and
g) ordering that Respondents shall return to Petitioner all personal property belonging to Petitioner that was seized at the time of detention and that is currently in their custody, possession, or control, whether maintained directly by Respondents or by any contracted or affiliated facility, and that such property shall be returned in the same condition as it existed immediately prior to Petitioner's detention; and
h) Granting such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/ S. Michael Musa-Obregon

S. Michael Musa-Obregon, Esq.

MUSA-OBREGON LAW P.C.
140 Grand Street, Suite 307
White Plains, NY 10601
michael@musa-obregon.com
718-803-1000
April 27, 2026; New York, NY

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

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have received this information from law firm staff members, the office file, counsel's investigations, and the Petitioner, who has granted his lawyers permission to discuss the events described in this Petition with his family. On the basis of this understanding, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: April 27, 2026	BY: *S. Michael Musa-Obregon* S. Michael Musa-Obregon

CERTIFICATE OF SERVICE

I certify that on April 27, 2026, I caused the foregoing Petition, Emergency Motion, and Order to Show Cause to be served by electronic mail and certified mail by US POSTAL SERVICE on the United States Attorney's Office for the EASTERN DISTRICT OF NEW YORK, Civil Division, and by electronic mail and by certified mail US POSTAL SERVICE on counsel for Respondents, and I further caused service on Respondents in their official capacities via the U.S. Attorney as permitted by applicable rule.

s/ S. Michael Musa-Obregon

S. Michael Musa-Obregon, Esq.
MUSA-OBREGON LAW P.C.
140 Grand Street, Suite 307
White Plains, NY 10601
michael@musa-obregon.com
718-803-1000
New York, NY