MUSA-OBREGON LAW PC

ATTORNEYS AND COUNSELORS AT LAW
140 Grand Street, Suite 307
White Plains, New York 10601
TEL (718)803-1000
FAX (866)788-8061

S. MICHAEL MUSA-OBREGON

PETER KAPITONOV*
MARIANNY REYES
KARL J. ASHANTI
SAMI EL CHERIF
ALEIX CUADRADO
NOEL AKINSOLA
MUHAMMAD SALMAN IQBAL

MELISSA BARBOSA KOBERNITSKI
Of Counsel

*Admitted NY, NJ

MANHATTAN OFFICE
757 THIRD AVENUE, 20TH FL
NEW YORK, NY 10017

REPLY TO WHITE PLAINS OFFICE

By ECF

May 6, 2025

Honorable Natasha C. Merle, U.S.D.J.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Lopez Menjivar v. Genalo, et al.*, No. 26-cv-2506 (NCM) Petitioner's Reply and Letter Brief in Supportof Petition for a Writ of Habeas Corpus.

Dear Judge Merle:

Petitioner Juan Carlos Lopez Menjivar respectfully submits this letter in reply to Respondents' May 4, 2026 submission and in further support of the Petition for a Writ of Habeas Corpus.

Respondents' return confirms the central point of the Petition: ICE seized Petitioner at JFK Airport, placed him in custody, moved him through multiple facilities, and continues to imprison him without having produced any contemporaneous individualized custody determination, any notice of custody determination, any reasoned custody decision, any custody review record, any Form I-286, any Form I-213, any actual Form I-205, any record of service, or any document showing that an authorized official made a lawful custody decision before or contemporaneously with the deprivation of liberty.

Respondents attempt to recast this case as an attack on an old in absentia removal order. It is not. Petitioner does not ask this Court to reopen his immigration case, vacate the immigration judge's order, adjudicate removability, or grant immigration relief. He challenges his present physical detention: the warrantless or unsupported seizure at JFK, the absence of a lawful custody determination, the failure to provide notice and an opportunity to respond, and ICE's failure to comply with the INA, the Fourth Amendment, the Fifth Amendment, and binding regulations before imprisoning him. That is the heartland of habeas corpus.

The recent immigration habeas caseload in this Circuit and nearby districts is not ancillary to this case. It is directly on point. Courts have repeatedly granted habeas release to noncitizens with prior removal, deportation, expedited-removal, in absentia, or reinstatement histories where ICE attempted to re-detain them under § 1231, cancel prior release, revoke supervision, or assert a shifting statutory theory without lawful process. See, e.g., *Diallo v. Joyce*, No. 25-CV-9909 (AS), slip op. at 1–8 (S.D.N.Y. Dec. 23, 2025); *Zhang v. Genalo*, No. 25-CV-06781 (NRM), 2025 WL 3733542, at *8–16 (E.D.N.Y. Dec. 28, 2025); *Zhu v. Genalo*, 798 F. Supp. 3d 400, 408–15 (S.D.N.Y. 2025); *Funes Gamez v. Francis*, No. 25 Civ. 7429 (PAE), 2025 WL 3263896, at *14–25 (S.D.N.Y. Nov. 24, 2025); *E.M.M. v. Almodovar*, No. 25-CV-08212 (MMG), 2025 WL 3077995, at *1–6 (S.D.N.Y. Nov. 4,

2025); *Roman-Cruz v. Lyons*, No. 25-CV-10522 (RA), 2026 WL 114936, at *1–3 (S.D.N.Y. Jan. 15, 2026); *Ndoye v. Joyce*, No. 25-CV-8856 (VSB), slip op. at 2–16 (S.D.N.Y. Feb. 6, 2026); *Zhang v. Bondi*, No. 25-CV-10418 (JPO), slip op. at 1–9 (S.D.N.Y. Jan. 7, 2026); *Rodriguez-Acurio v. Almodovar*, No. 2:25-CV-6065 (NJC), slip op. at 1–70 (E.D.N.Y. Nov. 10, 2025); *Padilla Molina v. Deleon*, No. 25-CV-6526 (JMA), slip op. at 1–11 (E.D.N.Y. Dec. 23, 2025); *Ye v. Maldonado*, No. 25-CV-6417 (AMD), slip op. at 1–21 (E.D.N.Y. 2025); *Xu v. Bondi*, No. 25-16274 (BRM), slip op. at 1–7 (D.N.J. Jan. 6, 2026). Those cases stand for a straightforward principle: a prior order may be relevant to removal, but it is not a blank check for secret detention, post hoc statutory theories, unproduced warrants, unreviewable airport seizures, or imprisonment without a custody determination.

Respondents' jurisdictional argument would convert every detention challenge involving a person with a prior order into an unreviewable removal challenge. That is not the law. If accepted, it would overrule *Zadvydas*, *Demore*, *Jennings*, *Hechavarria*, *Velasco Lopez*, *Black*, *Öztürk*, *Barbosa Da Cunha*, and the many recent habeas decisions requiring ICE to identify the correct detention statute and follow minimum process before jailing a person. The Court should reject Respondents' effort to transform a custody challenge into a petition for review and should grant the writ.

I. Respondents' own return confirms that no custody determination has been produced.

Respondents' factual submission is remarkable for what it does not contain. The Government asserts that ICE issued a Form I-205 on March 16, 2026 and arrested Petitioner on March 17, 2026 at JFK. It says that the Long Island Fugitive Operations team received advance notification from the ICE Pacific Enforcement Response Center and TSA that Petitioner was scheduled to take a domestic flight from JFK to Las Vegas, and that ICE then conducted a "targeted enforcement operation" at JFK. Resp. at 2–3; Irving Decl. ¶¶ 12–14. It further says that Petitioner was "notified" the same day that his 2005 Order of Release on Recognizance was cancelled. Irving Decl. ¶ 15. It then concludes that he is detained under 8 U.S.C. § 1231. Id. ¶ 25.

But Respondents have not produced the very documents necessary to test those assertions. They did not attach the alleged 2026 I-205. They did not attach the 2006 I-205. They did not attach any Form I-286, Notice of Custody Determination. They did not attach any Form I-213. They did not attach any arrest report, booking record, custody classification, custody review, notice of revocation, written decision to detain, record of service, supervisory approval, or document showing who made the detention decision, when it was made, what statutory provision was invoked, what facts were considered, or why detention rather than release or alternatives was selected.

A declaration paraphrasing ICE's file is not the "true cause" of detention required by 28 U.S.C. § 2243. The habeas statute requires the custodian to certify the true cause of detention, not to provide a curated narrative while withholding the operative records. Where liberty is restrained, the record is the case. Without the custody documents, the Court cannot determine whether ICE had lawful authority to seize Petitioner, whether any warrant was actually issued and served, whether the decisionmaker was authorized, whether § 1231 was validly invoked, whether any regulation was followed, or whether any individualized custody determination occurred.

This omission is especially important because in the recent release cases, courts examined the actual custody documents—and ordered release even when the Government had produced more than Respondents have produced here. In *Zhang v. Bondi*, the Government produced a Notice of Revocation of Release, a Warrant of Removal, and a deportation-officer declaration. No. 25-CV-10418 (JPO), slip op. at 2–3. Judge Oetken still granted habeas because "the Notice of Revocation of Release" itself violated due process. Id. at 3–9. In *Roman-Cruz*, the Government produced a Notice of Revocation of Release, a Warrant of Removal, a Warrant for Arrest, and claimed it conducted an informal interview. No. 25-CV-10522 (RA), 2026 WL 114936, at *1–2. Judge Abrams still ordered immediate release because the revocation was not authorized and violated due process. Id. at *2–3. In *Funes Gamez*, Judge Engelmayer held an evidentiary hearing, considered testimony from the petitioner, counsel, and ICE, and still found that the manner in which ICE took Funes into custody violated regulations and due process. 2025 WL 3263896, at *1–25. Here, the defect is more basic: Respondents have not even produced the operative documents.

That failure alone warrants relief. At minimum, it warrants an adverse inference that no contemporaneous custody determination exists. The Government had full control over the arrest and detention record. It chose to submit an NTA, an old in absentia order, the immigration judge's later order denying reopening, and a declaration. It chose

not to submit the actual custody file. The missing records are not peripheral. They are the documents that would show whether Petitioner is lawfully detained.

The recent cases also foreclose the notion that the Government may describe an internal process and thereby avoid producing the record. In *Zhu*, ICE arrested a 67-year-old Chinese national at his home in Staten Island, canceled his supervision without notice or explanation, and transferred him to MDC Brooklyn. 798 F. Supp. 3d at 402–04. At the habeas hearing, the Government confirmed that Zhu had not received a Notice of Revocation or an interview. Id. at 404. Judge Rochon ordered release. Id. at 414–15. In *Ndoye*, the Government relied on an "administrative arrest" and a revocation document, but Judge Broderick looked at the regulation and delegation order and held that the Government had not followed its own rules. No. 25-CV-8856 (VSB), slip op. at 2, 14–16. Here, Respondents have produced even less than in *Zhu* and *Ndoye*. They ask the Court to infer a lawful custody determination from silence. Habeas does not permit that.

Respondents' failure to produce the custody record is especially serious because the habeas return is not an ordinary pleading. Section 2243 requires the custodian to "certify[] the true cause of the detention." 28 U.S.C. § 2243. That obligation cannot be satisfied by a declaration that says, in effect, "trust us." A habeas court must be able to examine the operative record. See *Harris v. Nelson*, 394 U.S. 286, 291 (1969) ("The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action."); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (courts retain authority to review immigration detention for statutory and constitutional compliance). Where the Government withholds the arrest and custody documents that allegedly authorize detention, it prevents meaningful review and cannot meet its burden to justify custody.

II. The recent habeas release cases are factually analogous and foreclose Respondents' "prior order equals lawful custody" theory.

Respondents' theory is that because Petitioner has an old final order, and because ICE says removal is possible, the Court cannot or should not examine the legality of custody. That is precisely the proposition rejected by the recent habeas cases.

In *Diallo*, ICE arrested a 52-year-old Guinean woman at LaGuardia Airport while she was trying to fly to Texas to visit family for Thanksgiving. No. 25-CV-9909 (AS), slip op. at 1. Diallo had a 2012 removal order, but the immigration judge had withheld removal to Guinea based on proof that she would face persecution there. Id. She had lived peacefully in the United States for thirteen years, was married to a U.S. citizen, had a son and extended family in New York, had an approved I-130 petition, had work authorization, and worked as a home health aide. Id. The Government did not contend she was dangerous or a flight risk. Id. Yet without notice, ICE took her out of the LaGuardia security line, arrested her, shipped her to Louisiana, and detained her while it attempted to find a third country to accept her. Id. The Government did not know whether that process would take months or years. Id.

Judge Subramanian granted habeas release, explaining that to lawfully detain Diallo, **"the government had to act pursuant to its statutory authority, in compliance with its own regulations, and consistent with the United States Constitution. It didn't do any of these things."** *Diallo*, slip op. at 2. The court rejected the Government's argument that § 1231(a)(6) authorized detention "regardless of when ICE detains the individual" and "regardless of whether she was previously detained during the 90-day removal period." Id. at 2–3. **The court held that § 1231(a)(6) is not "a free-roaming right to arrest and detain people any time it sees fit, even a decade after the fact."** Id. at 3. That language fits this case nearly word for word. Petitioner was also a long-resident noncitizen arrested at a New York airport while traveling domestically; the Government also invokes § 1231; the removal period tied to the old order expired decades ago; Respondents also identify no danger finding, no flight-risk finding, no notice, no custody review, and no contemporaneous custody determination.

Funes Gamez is also instructive. Funes had a prior in absentia removal order from 2004, had been removed to Honduras, later returned with her family, claimed fear, and was released on an order of supervision. 2025 WL 3263896, at *1–6. She undisputedly complied with her supervision conditions. Id. at *6–8. On September 8, 2025, she appeared at 26 Federal Plaza with her two-year-old U.S.-citizen son and immigration counsel for a scheduled ICE check-in. Id. at *1. ICE summarily took her into custody under § 1231 and transported her the next day to Louisiana for removal. Id. Judge Engelmayer ordered immediate release, holding that "the manner in which Funes was taken into custody" violated ICE's regulations and due process. Id. at *1–2, *24–25. The court emphasized

that Funes was not asking the district court to vacate the removal order; she was challenging the process by which ICE re-detained her. Id. at *1–2. That is exactly Petitioner's position here.

Zhu involved a final order dating back to the early 2000s. 798 F. Supp. 3d at 402–03. ICE detained Zhu in 2018 to execute the order, but released him on supervision after it could not secure travel documents. Id. Years later, Homeland Security Investigations agents encountered him outside his Staten Island home, asked for identification, took him into custody, and brought him to 26 Federal Plaza. Id. at 403. His attorney emailed ICE to ask why he was being detained and received no response. Id. The Government later argued that China had begun accepting removals and that travel-document efforts were underway. Id. at 403–04. Judge Rochon nevertheless ordered release because ICE had provided no notice, no explanation, and no interview. Id. at 408–15. That decision is fatal to Respondents' "imminent removal" argument here. A possible future removal does not cure a present lack of custody process.

Roman-Cruz likewise involved a prior removal/reinstatement history and the Government's claimed interest in third-country removal. Roman-Cruz had an expedited removal order, multiple reinstatements, and later CAT withholding to Guatemala. No. 25-CV-10522 (RA), 2026 WL 114936, at *1. Because he could not be removed to Guatemala, ICE contacted Ecuador, Honduras, and the Dominican Republic; no country accepted him. Id. He was then released on an OSUP. Id. When he later appeared for a check-in, ICE detained him, revoked the OSUP, and asserted that the changed circumstance was a renewed third-country removal attempt. Id. Judge Abrams ordered immediate release because the official who revoked release lacked authority, violating due process. Id. at *2–3. The case shows that even where ICE asserts active removal planning, and even where warrants and revocation paperwork exist, detention cannot stand unless the Government follows the correct process through an authorized official. Here, Respondents have not even produced the alleged warrant or any revocation paperwork.

E.M.M. involved a Nicaraguan national with a 2018 removal order and a 2022 reinstatement. No. 25-CV-08212 (MMG), 2025 WL 3077995, at *1–2. ICE detained him for about a month, then released him on supervision because it had "not effected [his] deportation or removal during the period prescribed by law." Id. at *2. He complied with all OSUP terms for three years and appeared at every appointment. Id. At an October 2025 check-in, ICE detained him and gave him a revocation notice signed by an Assistant Field Office Director. Id. Judge Garnett granted habeas and ordered release because the revocation was not authorized and due process was violated. Id. at *5–6. If a signed revocation notice by an identified official was insufficient in *E.M.M.*, Respondents' unsupported assertion that Petitioner's 2005 recognizance release was "cancelled" is plainly insufficient here.

Zhang v. Bondi deepens the point. Zhang was a lawful permanent resident with serious criminal convictions, a final removal order since 2001, and a long history of post-order supervision after China declined to issue travel documents. No. 25-CV-10418 (JPO), slip op. at 1–2. ICE arrested him at a December 2025 OSUP appointment and produced a Notice of Revocation, Warrant of Removal, and declaration. Id. at 2–3. Judge Oetken still granted habeas, holding that the notice itself violated procedural due process. Id. at 3–9. The court quoted *Velasco Lopez* for the rule that the Fifth Amendment protects noncitizens "whether their presence here is lawful, unlawful, temporary, or permanent," and emphasized that executive detention orders "call for the most searching review." Id. at 3. **It then held that the basic due-process protections at issue apply "no less" to "a non-citizen with a felony criminal conviction who has been served with a final order of removal."** Id. at 4 (citing *Zhang v. Genalo*, No. 25-CV-06781, 2025 WL 3733542, at *9 (E.D.N.Y. Dec. 28, 2025)). Petitioner here has no criminal history identified by Respondents, a U.S.-citizen child, and no custody documents at all. His case is stronger.

Ndoye is significant because it rejects the Government's casual "administrative arrest" theory. Ndoye had lived in the United States for more than fifteen years and had been subject to a final order since about 2008, with an OSUP since 2009. No. 25-CV-8856 (VSB), slip op. at 2. ICE arrested him near Canal Street during an operation to "check on people who were working or selling objects," and the Government argued that "probable cause and things like that" were "inapplicable" because it was an "administrative arrest." Id. at 2 n.1. Judge Broderick granted the writ because ICE violated its own regulations. Id. at 2, 6–16. That case is directly relevant here. Respondents cannot avoid the Fourth Amendment, § 1357(a)(2), § 287.3, § 287.8, § 236.1, or due process by calling the JFK operation "targeted" or "administrative."

The EDNY cases point the same way. In *Rodriguez-Acurio*, Judge Choudhury rejected the Government's "imprecise and shifting" detention theories after ICE arrested an asylum seeker immediately following a credible-fear interview, even though she had lived in the United States for years, had a U.S.-citizen child, work

authorization, no criminal history, and had appeared as directed. No. 2:25-CV-6065 (NJC), slip op. at 1–3. The court emphasized that no one at DHS or ICE had made any individualized determination that she posed a flight or public-safety risk before she was suddenly arrested and detained. Id. at 3, 54–60. In *Padilla Molina*, Judge Azrack ordered immediate release where ICE stopped and arrested a long-resident Central Islip petitioner who had no criminal history, a pregnant partner, and years of compliance. No. 25-CV-6526 (JMA), slip op. at 1–3. In *Ye*, Judge Donnelly granted habeas where ICE cancelled a release on recognizance at a check-in without prior notice, individualized explanation, or opportunity to be heard, and the only record justification was that bedspace had become available. No. 25-CV-6417 (AMD), slip op. at 3–5. These EDNY decisions are particularly important because Petitioner was arrested in this District, processed in Central Islip, and remains detained at MDC Brooklyn.

Taken together, these cases foreclose Respondents' premise that a prior order of removal alone defeats habeas jurisdiction or automatically supplies lawful custody. The issue is not whether the old order exists. The issue is whether ICE lawfully seized and detained Petitioner now, with statutory authority, regulatory compliance, and due process.

III. This Court has habeas jurisdiction because Petitioner challenges present detention, not the removal order.

Respondents' principal argument is that 8 U.S.C. §§ 1252(a)(5), 1252(b)(9), and 1252(g) bar this Court from considering the legality of detention. That argument fails for several independent reasons.

First, habeas jurisdiction exists under 28 U.S.C. § 2241 because Petitioner is in federal custody and alleges that his custody violates the Constitution, statutes, and regulations of the United States. Section 2243 then requires a prompt return certifying the true cause of detention. Habeas has always been the remedy for unlawful executive detention. *INS v. St. Cyr*, 533 U.S. 289, 301, 314 (2001); *Zadvydas*, 533 U.S. at 687; *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Hechavarria v. Sessions*, 891 F.3d 49, 53–55 (2d Cir. 2018); *Öztürk v. Hyde*, 136 F.4th 382, 397–401 (2d Cir. 2025).

Respondents' threshold invocation of sovereign immunity is misplaced. A § 2241 habeas petition challenging present federal custody is not an APA damages action against the United States. It is the traditional vehicle for testing whether the custodian may lawfully restrain the body of the petitioner. See *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Rumsfeld v. Padilla*, 542 U.S. 426, 435–39 (2004); *Munaf v. Geren*, 553 U.S. 674, 693–94 (2008). The relief requested—release from unlawful custody or a lawful custody hearing—runs against the custodians and federal officials responsible for the detention. The sovereign immunity cases Respondents cite do not bar the Great Writ.

Second, §§ 1252(a)(5) and 1252(b)(9) do not bar challenges to present physical custody that are independent of the removal order. Section 1252(a)(5) channels review "of an order of removal" to the court of appeals. Petitioner does not seek review of the removal order. Section 1252(b)(9) channels questions "arising from" removal proceedings into a petition for review. Petitioner's claims do not arise from the immigration judge's adjudication of removability; they arise from ICE's March 2026 arrest and detention at JFK and the absence of any custody process.

The Supreme Court rejected the Government's same overbroad reading of § 1252(b)(9) in *Jennings v. Rodriguez*, 583 U.S. 281, 294–96 (2018), explaining that detention claims are not automatically "arising from" removal proceedings simply because they occur in the immigration context. The Second Circuit reaffirmed this in *Öztürk*, holding that the Government was unlikely to succeed on the argument that §§ 1252(a)(5) and 1252(b)(9) barred habeas claims challenging detention rather than removal. 136 F.4th at 397–401.

Third, § 1252(g) is narrow. It applies only to claims arising from the decision or action to commence proceedings, adjudicate cases, or execute removal orders. *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482–87 (1999). It does not bar claims that challenge the legality, manner, or conditions of detention. A detention claim does not become an execution-of-removal claim merely because release may make removal less convenient. If that were enough, no habeas court could ever order release in an immigration case involving a final order, and *Zadvydas* itself would have been barred.

The recent cases prove the point. *Diallo*, *Funes Gamez*, *Zhu*, *Roman-Cruz*, *E.M.M.*, *Zhang v. Bondi*, *Zhang v. Genalo*, and *Ndoye* all involved prior final orders, reinstatements, or post-order detention settings. The district courts did not dismiss for lack of jurisdiction merely because ICE invoked § 1231 or because release might affect

removal logistics. They asked whether the present detention was lawful. That is exactly the question presented here.

Indeed, the very case on which Respondents rely, *Lin v. Francis*, rejected the same jurisdictional argument. Although Judge Engelmayer denied habeas relief on the merits in *Lin*, he held that § 1252 did not divest the court of jurisdiction because Lin challenged "the manner of his detention," not the removal order itself. *Lin v. Francis*, No. 25 Civ. 10001 (PAE), 2025 WL 3751855, at *4–5 (S.D.N.Y. Dec. 29, 2025). That holding is fatal to Respondents' jurisdictional theory. If § 1252 did not bar jurisdiction in *Lin*, where the petitioner was arrested at an airport pursuant to a final order and sought release, it does not bar jurisdiction here.

Fourth, Respondents' reliance on *Delgado v. Quarantillo*, 643 F.3d 52 (2d Cir. 2011), and similar adjustment or collateral-immigration-benefit cases is misplaced. In *Delgado* and *Singh v. USCIS*, 878 F.3d 441 (2d Cir. 2017), the plaintiffs sought relief that, if granted, would have invalidated or nullified the removal order. Here, release from custody would not vacate the in absentia order. It would not adjudicate removability. It would not reopen proceedings. It would not grant cancellation, asylum, withholding, or adjustment. It would simply restore Petitioner's liberty unless and until the Government complies with the procedures required to detain him.

Respondents also rely on cases such as *Villatoro v. Shanahan*, No. 26-CV-1210, 2026 WL 948297 (E.D.N.Y. Apr. 7, 2026), *Villatoro v. Noem*, No. 25-CV-5306, 2025 WL 2880140 (E.D.N.Y. Oct. 9, 2025), *Sauceda Henriquez v. Noem*, No. 25-CV-7023, 2026 WL 111665 (E.D.N.Y. Jan. 15, 2026), *Ceesay v. Bondi*, No. 25-CV-3716, 2025 WL 1435615 (S.D.N.Y. May 16, 2025), and *Rodriguez v. Warden, Orange County Correctional Facility*, No. 23-CV-242, 2023 WL 2632200 (S.D.N.Y. Mar. 23, 2023). Those decisions do not control this case. To the extent those cases involved claims whose practical object was to stop removal itself, they are materially different. To the extent they contain broader language treating every post-order detention challenge as an indirect challenge to removal, that reading cannot be squared with *Jennings*, *Zadvydas*, *St. Cyr*, *Demore*, *Hechavarria*, and *Öztürk*. The Second Circuit's decision in *Öztürk* is binding and rejects the Government's effort to use the INA's jurisdictional provisions to defeat habeas review of detention-related claims. 136 F.4th at 397–401.

Fifth, Respondents' reliance on *Lin v. Borgen*, No. 25-CV-5618, 2025 WL 2158874 (S.D.N.Y. July 30, 2025), is also misplaced. There, the court treated the relief requested as barring ICE from effectuating imminent removal. Here, Petitioner challenges the legality of custody itself and seeks release from unlawful detention or, at minimum, a constitutionally adequate custody determination. The fact that the Government says removal would be easier if Petitioner remains jailed does not transform the habeas petition into a petition for review. Habeas relief often affects the Government's preferred method of enforcement. That is not a jurisdictional defect; it is the point of habeas review.

Sixth, the Court's temporary order preserving jurisdiction is not barred by § 1252(g). Habeas jurisdiction would be meaningless if the Government could defeat it by transferring or removing a petitioner before the Court can determine the legality of custody. The Second Circuit in *Öztürk* held that district courts retain authority, grounded in habeas and the All Writs Act, to issue orders necessary to preserve meaningful habeas review, including transfer-related relief. 136 F.4th at 397–403. An order preserving the status quo while the Court adjudicates detention does not review the removal order; it protects the Court's ability to decide whether the imprisonment is lawful.

Respondents' rule would place detention beyond review whenever ICE says detention is connected to removal. That is precisely the argument the Supreme Court and Second Circuit have rejected. This Court has jurisdiction.

IV. *Barbosa Da Cunha*, *Rodriguez-Acurio*, *Padilla Molina*, *Ye*, and *Guzman Cardenas* confirm that the Court must identify the correct detention statute and reject post hoc labels.

Respondents state that this case is not controlled by *Barbosa Da Cunha v. Freden*, No. 25-3141-pr (2d Cir. Apr. 28, 2026), because the Government now claims § 1231 rather than § 1225. That misses the point. *Barbosa Da Cunha* controls at the level that matters here: a habeas court must identify the correct statutory basis for detention, cannot accept the Government's conclusory label, and may grant the writ where the asserted detention statute does not authorize the custody imposed.

In *Barbosa Da Cunha*, the Government argued that a long-resident noncitizen who entered without inspection was subject to mandatory detention under § 1225(b)(2)(A). The district court disagreed, held that § 1226(a) applied, and ordered a bond hearing or release. The Second Circuit affirmed the grant of habeas relief. The court emphasized that the detention statute matters because § 1225 would impose mandatory detention while § 1226

permits release on bond. *Barbosa Da Cunha*, No. 25-3141-pr, slip op. at 2–3. The Second Circuit then rejected the Government's "newfound interpretation" because the text, structure, history, purpose, longstanding Executive practice, and constitutional avoidance all foreclosed it. Id.

That reasoning applies here. Respondents cannot avoid habeas review by invoking § 1231 in a declaration. They must prove that § 1231 applies, that it authorizes this detention, that the statutory and regulatory predicates were satisfied, and that the detention complied with due process. *Barbosa Da Cunha* confirms that habeas courts do not rubber-stamp ICE's detention label. They examine the statute, the record, and the process actually provided.

The EDNY and SDNY statutory-label cases add further depth. In *Rodriguez-Acurio*, the Government's theories were "imprecise and shifting." No. 2:25-CV-6065 (NJC), slip op. at 1–3. It principally invoked § 1225(b)(1), alternatively invoked § 1225(b)(2), and yet the Form I-200 warrant served on the petitioner cited "sections 236 and 287," corresponding to § 1226 and § 1357. Id. at 10–11, 53–54. Judge Choudhury treated that contradiction as central, explaining that the fact ICE secured a warrant suggested that ICE itself understood the detention as discretionary rather than mandatory. Id. at 53–54. The court then held that the petitioner's detention fell under § 1226(a) and that no one at DHS or ICE had made an individualized flight-risk or public-safety determination before the sudden arrest. Id. at 54–60.

That reasoning applies here even though Respondents now invoke § 1231. If Respondents contend that the 2026 I-205 authorized the arrest, they must produce it. If the document, once produced, contradicts their theory, postdates the seizure, lacks required signatures, fails to show service, or does not itself contain a custody determination, those defects matter. If Respondents instead rely on the cancellation of a 2005 release on recognizance, they must identify the statute, regulation, officer, notice, reasons, and process governing that cancellation. They cannot ask this Court to accept a label while withholding the document.

In *Padilla Molina*, Judge Azrack granted habeas after ICE stopped a long-resident Central Islip petitioner while he was driving with his pregnant partner and mother-in-law, served him with an I-200, moved him through EDNY facilities, and detained him at MDC. No. 25-CV-6526 (JMA), slip op. at 1–3. The petitioner had entered as a child, had no criminal record, had complied with immigration proceedings, and had strong family ties. Id. at 1–2. Judge Azrack first issued a TRO ordering immediate release, then granted the writ. Id. at 1, 3. That EDNY case demonstrates that when ICE seizes a long-resident person in the interior, the court must examine the statutory basis and process, not defer to ICE's custody label.

In *Ye*, Judge Donnelly granted habeas where ICE cancelled a release on recognizance and re-detained a Chinese asylum seeker at a check-in. No. 25-CV-6417 (AMD), slip op. at 3–5. Ye had been released on recognizance under § 1226, had no criminal record, and had complied with all reporting requirements. Id. at 2–3. The Government claimed it cancelled release "following appropriate procedures," but provided no meaningful justification; the only explanation in the record was that he was "subject to be re-detained now that bedspace is available." Id. at 3–4. The court granted habeas. Id. at 1, 21. Menjivar's case is the same in the relevant respect: Respondents say his recognizance was cancelled, but they do not produce the cancellation decision, identify the officer, state the reasons beyond a conclusory "failure to comply," or show any custody review.

In *Guzman Cardenas*, Judge Furman rejected the Government's effort to place a long-resident Honduran woman in mandatory § 1225(b)(2)(A) detention after she went to a scheduled ICE appointment and was taken into custody "without warning or explanation." No. 25-CV-9169 (JMF), slip op. at 1–4. The court observed that the distinction between mandatory § 1225 detention and discretionary § 1226 detention had "great significance" because § 1226 affords an initial custody determination and bond review. Id. at 2. The same principle applies here. The Government's chosen label—§ 1231—cannot be used to erase the need for a lawful custody decision where the mandatory removal period expired twenty years ago and the present detention is discretionary at most.

Nor can Respondents distinguish *Barbosa Da Cunha* by saying this case involves a final order. The same statutory-identity principle applies with equal force in post-order cases. A court cannot determine whether § 1231 authorizes custody without knowing whether the Government is invoking the ninety-day mandatory removal period, discretionary post-removal-period detention under § 1231(a)(6), an order of supervision, revocation of release, cancellation of recognizance, reinstatement, or some other authority. Each route has different predicates, different procedural rules, and different consequences for liberty. The Government's label is not enough.

V. Section 1231 does not create a free-roaming power to seize and jail Petitioner without process twenty years after an in absentia order.

Respondents' merits argument is equally defective. They assert that because Petitioner is subject to a final order, and because he has been detained fewer than six months, detention is lawful under § 1231(a)(6) and *Zadvydas*. That argument answers the wrong question.

Petitioner's claim is not merely that detention has already become indefinite under *Zadvydas*. His claim is that ICE never lawfully invoked detention authority in the first place. **The issue is not only how long ICE may detain a person after custody begins. The issue is whether ICE could seize him at JFK and imprison him without a lawful arrest basis, without notice, without a custody determination, without a written decision, without reasons, without an opportunity to respond, and without producing the custody record.**

Zadvydas does not hold that ICE may detain anyone with a final order for six months without process. *Zadvydas* construed § 1231(a)(6) to avoid the serious constitutional problem of indefinite detention. 533 U.S. at 689–701. It did not authorize warrantless arrests, eliminate the Due Process Clause, repeal ICE's regulations, or excuse the Government from producing a custody determination. The six-month presumption is not a grace period during which the Executive may imprison without a lawful basis.

The text of § 1231 confirms the point. The mandatory removal period is ninety days. 8 U.S.C. § 1231(a)(1)–(2). Here, if the 2006 in absentia order became final in May 2006, the mandatory removal period expired nearly twenty years ago. After that period, § 1231(a)(6) uses discretionary language: certain noncitizens "may be detained beyond the removal period." That language does not automatically impose detention. It requires an actual exercise of discretion, and discretionary detention cannot be exercised in secret, without reasons, without records, and without due process.

Diallo is the most important case on this point. Diallo was not a supervision-revocation case in the ordinary sense because, like Menjivar, she had never been placed on an order of supervision. No. 25-CV-9909 (AS), slip op. at 2. She had a final order from 2012, but the ninety-day removal period had expired thirteen years earlier. Id. The Government argued that § 1231(a)(6) let ICE detain her at any later date because she had a final order and was inadmissible. Id. Judge Subramanian rejected that argument, holding that § 1231(a)(6) "provides for a period of continued detention" after the ninety-day removal period, not an evergreen arrest power. Id. at 3. The court held that the Government "can't detain anyone it wants" and "needs a statutory basis to arrest and detain people." Id. at 2–3.

That holding applies directly. Respondents say Petitioner's removal order became final in 2006 and that ICE was unable to locate him. But they do not show that he was detained during the ninety-day removal period, that he was placed on supervision at the end of that period, that he was later lawfully re-detained under a supervision-revocation procedure, or that any officer made a current discretionary detention decision under § 1231(a)(6). They rely on the same "regardless of when ICE detains" theory rejected in *Diallo*.

Respondents attempt to distinguish *Diallo* by saying removal here is "imminent" because ICE has a passport. That distinction is overstated and incomplete. First, Respondents have not produced the actual 2026 I-205, flight itinerary, removal packet, travel authorization, custody decision, proof of service, or travel-document packet showing that removal is lawful and imminent. Second, imminent removal, even if proven, does not retroactively validate an unlawful arrest or eliminate due process. Third, *Diallo* itself recognized that truly imminent, lawful removal may present a different question, but it did not suggest that ICE may seize first, withhold the record, and provide no custody process. Fourth, any "imminence" here is partly the product of ICE's own attempt to remove Petitioner before the Court could review the legality of custody. Habeas review cannot be defeated by racing the petitioner to a plane.

Xu reinforces that courts should not accept "imminence" on faith. In *Xu*, the petitioner had a 2011 final order and had complied with supervision for fourteen years. No. 25-16274 (BRM), slip op. at 1–3. ICE detained him at a routine check-in after allegedly serving a notice stating that a travel document had been procured and removal was "imminent." Id. at 2. But the record did not actually show that a travel document had been procured, and the Government's opposition recast the notice as merely saying ICE was making reasonable efforts. Id. Judge Martinotti granted habeas. Id. at 1, 6–7. The lesson is simple: a court must examine the documents, not a declaration's characterization of them. Here, Respondents have not produced the documents at all.

Nor does *Lin v. Francis* compel denial. *Lin* is distinguishable and, on jurisdiction, helpful to Petitioner. In *Lin*, ICE produced the actual NTA, referral notice, removal order, arrest warrant, removal warrant, and I-213. *Lin*, 2025 WL 3751855, at *1–3. The court emphasized that Lin had failed to appear at a USCIS asylum interview and

an immigration hearing, and that the record did not indicate any contact with ICE for more than twelve years. Id. at *8–9. On that record, the court found no statutory or regulatory violation. Id. Here, by contrast, Respondents have not produced the operative arrest and custody records. They have not produced the alleged 2026 I-205. They have not produced an I-213. They have not produced a custody decision. They have not produced an I-286. They have not shown who made the detention decision or why. And unlike the undeveloped due-process record in *Lin*, Petitioner squarely challenges the JFK seizure, the use of TSA/domestic-flight information, the lack of a valid warrant, the absence of a custody determination, and the failure to provide even minimal notice and an opportunity to respond.

Moreover, *Lin* did not accept Respondents' jurisdiction theory. It held the opposite: § 1252 did not bar review because the petitioner challenged the manner of detention, not the removal order. Respondents cannot use *Lin* as a merits shield while ignoring its jurisdictional holding.

VI. The Government's "no order of supervision" argument does not solve the due-process problem.

Respondents argue that *Funes Gamez*, *Zhu*, *Zhang*, *E.M.M.*, *Roman-Cruz*, and *Ndoye* are distinguishable because Petitioner was not on an order of supervision. That argument proves too much.

If Petitioner had been on supervision, ICE would have been required to comply with 8 C.F.R. § 241.4(l): notice of the reasons for revocation and a prompt informal interview to respond. Courts have repeatedly held those protections mandatory. *Funes Gamez*, 2025 WL 3263896, at *14–25; *Zhu*, 798 F. Supp. 3d at 408–15; *Zhang v. Genalo*, 2025 WL 3733542, at *10–16; *Zhang v. Bondi*, No. 25-CV-10418 (JPO), slip op. at 3–9; *Ndoye*, No. 25-CV-8856 (VSB), slip op. at 6–16.

Respondents say those regulations do not apply because Petitioner was never on supervision. But that leaves the Government with no identified procedure at all. It cannot be that a noncitizen who complied with supervision gets notice and an interview, while a person whom ICE released on recognizance and then left at liberty for twenty years gets no process whatsoever. The Due Process Clause does not permit the Government to exploit its own failure to place someone on a formal supervision document as a reason to provide less process before imprisonment.

Diallo addresses precisely this gap. There, the court recognized that Diallo had never been detained during the removal period and had never been given an order of supervision. *Diallo*, slip op. at 2. Even if § 241.4 did not apply by its own terms, the court held that due process required at least comparable minimal safeguards: notice and an opportunity to respond. Id. at 6–8. The court relied on *Zhu*'s *Mathews* analysis and held that the private interest in freedom from imprisonment, the high risk of erroneous deprivation, and the minimal burden of notice and an interview all favored the detainee. Id.; see *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

That reasoning applies here. Petitioner was not given notice of the reasons for detention. He was not given a custody decision. He was not given an opportunity to present evidence of family ties, address, lack of criminal history, eligibility for relief, alternatives to detention, medical or humanitarian factors, or lack of danger. He was not given a prompt hearing. And Respondents' return does not identify any individualized finding that he presents a danger or flight risk.

Respondents' own declaration also says that Petitioner's 2005 Order of Release on Recognizance was "cancelled." Irving Decl. ¶ 15. If ICE claims it cancelled a prior release status, it must identify the authority for that cancellation and the process provided. It cannot simultaneously rely on cancellation of a release document and deny that any revocation-type safeguards apply. Either the release was legally relevant, in which case cancellation required process, or it was not legally relevant, in which case it cannot justify detention. Respondents cannot have it both ways.

Ye is directly relevant on this point because it involved cancellation of release on recognizance, not merely an OSUP. There, ICE had released the petitioner on his own recognizance, later summoned him to a check-in, cancelled the release, arrested him, and detained him at MDC. No. 25-CV-6417 (AMD), slip op. at 3–5. The Government asserted that release had been cancelled "following appropriate procedures," but did not identify a meaningful individualized basis; the only explanation in the record was that bedspace was available. Id. Judge Donnelly granted habeas. Id. at 1, 21. That case supplies the missing bridge here: recognizance release cannot be cancelled by unexplained assertion. The Government must show the procedure, decisionmaker, statutory authority, reasons, and opportunity to respond.

The order-of-recognizance point also undercuts Respondents' effort to cast Petitioner as someone continuously outside any custody framework. ICE released him in 2005. If ICE later chose to cancel that release in 2026, that act was an exercise of custody discretion. Discretionary custody decisions require some process. At minimum, they require a decisionmaker, a statutory basis, reasons, notice, and a meaningful chance to respond. None has been produced.

E.M.M., *Roman-Cruz*, and *Ndoye* reinforce this point through their authorized-official holdings. In *E.M.M.*, the court held that an Assistant Field Office Director lacked authority to revoke supervision in the circumstances presented. 2025 WL 3077995, at *5–6. In *Roman-Cruz*, the same problem required immediate release even though ICE served warrants and asserted a third-country removal attempt. 2026 WL 114936, at *2–3. In *Ndoye*, Judge Broderick explained that the decision for a person at liberty is not a decision between "continued detention" and "release," but between "continued liberty and re-detention or revocation." No. 25-CV-8856 (VSB), slip op. at 14. That distinction matters here. Menjivar was at liberty for two decades. ICE's decision was not a routine continuation of existing detention; it was a new deprivation of liberty. Respondents must identify who made that decision and why. They have not.

VII. The JFK arrest was an interior civil immigration seizure, not a border inspection or aviation-security search.

The airport facts are central. Respondents' own declaration confirms that ICE received advance notice from TSA and the ICE Pacific Enforcement Response Center that Petitioner was scheduled to depart JFK on a domestic flight to Las Vegas, then conducted a targeted operation at JFK the next day. Irving Decl. ¶¶ 12–14. Petitioner alleges that he had checked in, entered the secure boarding area for a domestic flight, and was arrested in a restroom.

This was not a border encounter. It was not an inspection for admission. It was not an international-arrivals inspection. It was not a customs search. It was not a stop at the border or its functional equivalent. It was an interior civil immigration arrest of a domestic traveler inside JFK.

Diallo makes the airport setting especially significant. There, ICE took Diallo out of the LaGuardia security line while she was traveling domestically to Texas for Thanksgiving. No. 25-CV-9909 (AS), slip op. at 1. Judge Subramanian did not treat the airport setting as a border zone that stripped her of ordinary constitutional protections. The court treated the arrest as an immigration detention requiring statutory authority, regulatory compliance, and due process. Id. at 2. The same is true here. A domestic airport is not a constitutional no-man's-land. Once Petitioner was traveling domestically from New York to Nevada, the Government needed interior arrest authority and custody process.

Airport screening is an administrative-search regime justified by the narrow and urgent need to protect aviation safety. In *United States v. Albarado*, 495 F.2d 799 (2d Cir. 1974), a JFK airport-search case, the Second Circuit emphasized that the purpose of airport screening is not ordinary law enforcement but preventing weapons and hijackings. The court warned that the search regime would become constitutionally suspect if it degenerated from a search for weapons into a general search for evidence. Id. at 806–08. The Supreme Court's decision in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), reinforces the same rule: checkpoint or administrative searches cannot be repurposed for general law-enforcement objectives without individualized suspicion. Id. at 41–48.

ICE may not convert TSA's aviation-security system into a civil-immigration dragnet. If DHS used domestic-flight or TSA-screening information to locate Petitioner, follow him into the secure area, and arrest him in a restroom for civil immigration enforcement, the seizure must be judged as an interior arrest under the Fourth Amendment and the INA, not as a border search or aviation-security inspection.

Congress drew that distinction. Immigration officers have special authority at the border and as to persons seeking admission. See 8 U.S.C. § 1357(c). But Petitioner was not seeking admission. He was already inside the United States and was traveling domestically from New York to Nevada. The Government cannot transform a domestic airport into a border simply because TSA screening occurs there.

Nor can Respondents characterize the encounter as consensual. Under *United States v. Mendenhall*, 446 U.S. 544, 554 (1980), a seizure occurs when a reasonable person would not feel free to leave. Under *Florida v. Royer*, 460 U.S. 491, 501–02 (1983), an airport encounter becomes a seizure when officers restrain the traveler's movement, retain control of travel or identity documents, or direct the traveler away from his path. A domestic traveler

confronted by ICE officers in the secure area of JFK, prevented from boarding, questioned, and taken away in custody has been seized. The restroom setting only heightens the coercion.

The fact that Respondents say officers wore "POLICE," "ICE," and "ERO" markings confirms the coercive nature of the encounter. Irving Decl. ¶ 14. A person approached by a team of federal immigration officers inside the secured portion of an airport, asked pedigree questions, required to provide a passport, prevented from boarding a domestic flight, and taken to an ICE processing office would not reasonably feel free to disregard the officers and continue to the gate. That was a seizure.

VIII. ICE did not satisfy the statutory requirements for a warrantless interior immigration arrest.

The Fourth Amendment applies to civil immigration arrests in the interior. *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984); *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006). Congress also imposed statutory limits on immigration officers' warrantless arrest authority. Under 8 U.S.C. § 1357(a)(2), an immigration officer may arrest without warrant only if the officer has reason to believe the person is in the United States in violation of law **and** is likely to escape before a warrant can be obtained. The statute uses "and." Both requirements must be met.

The implementing regulation is even clearer. Under 8 C.F.R. § 287.8(c)(2)(ii), a warrant "shall be obtained in every instance where the person is not likely to escape before a warrant can be obtained." Under § 287.8(c)(2)(iii), the arresting officer must identify himself as an immigration officer authorized to make the arrest and state that the person is under arrest and the reason for the arrest as soon as practical and safe.

Respondents' own facts defeat any escape-risk theory. ICE knew at least one day in advance that Petitioner was scheduled to fly from JFK to Las Vegas. ICE knew the date, airport, and destination. ICE assembled a targeted operation involving ERO, CBP, and HSI officers. Respondents say ICE even issued a Form I-205 on March 16, the day before the arrest. These facts show planning, not exigency. They show that ICE had time to obtain whatever lawful warrant or authorization it believed necessary. They do not show that Petitioner was likely to escape before a warrant could be obtained.

If Respondents claim the I-205 supplied the arrest authority, they must produce it. They have not. And even if a Form I-205 exists, it is a warrant of removal/deportation issued by the agency; it is not a judicial warrant, it is not a neutral probable-cause determination, and it is not a custody determination. It does not state why detention is necessary. It does not determine danger or flight risk. It does not consider alternatives to detention. It does not satisfy the process required before or promptly after imprisonment.

If Respondents instead claim this was a warrantless arrest under § 1357(a)(2), they must prove both probable cause and likely escape before a warrant could be obtained. They have not. Either way, the arrest cannot support continued detention.

The recent cases expose the danger of relying on post hoc paperwork. In *Rodriguez-Acurio*, the Government relied on a declaration stating that the petitioner was detained under § 1225(b)(1), while the warrant on its face cited "sections 236 and 287." No. 2:25-CV-6065 (NJC), slip op. at 10–11, 53–54. Judge Choudhury treated the contradiction as evidence that the Government's detention theory could not stand. Id. at 53–54. If Respondents later produce a 2026 I-205 that does not match their narrative, lacks proof of service, postdates the seizure, or fails to show an authorized custody decision, that document will not cure the arrest; it will expose the same post hoc problem present in *Rodriguez-Acurio*.

Ndoye also matters here. The Government argued there that "probable cause and things like that" did not apply because the Canal Street arrest was "administrative." No. 25-CV-8856 (VSB), slip op. at 2 n.1. That position was not accepted. Judge Broderick granted habeas because even in the immigration context, ICE must comply with the governing rules. Id. at 2, 6–16. The Government cannot evade the Fourth Amendment, § 1357, and its own regulations by calling the JFK operation "targeted" or "administrative."

The timing matters. Probable cause must exist "at the moment the arrest was made." *Beck v. Ohio*, 379 U.S. 89, 96 (1964). An arrest "is good or bad when it starts and does not change character from its success." *United States v. Di Re*, 332 U.S. 581, 595 (1948). Respondents cannot use Petitioner's answers to pedigree questions, his compelled production of a passport, or later database checks to retroactively justify a seizure that had already occurred. Nor may they use later-generated forms to paper over the absence of lawful authority at JFK.

The same principle applies in immigration cases. Officers may investigate and then arrest if the statutory predicates exist; they may not arrest first and determine status later. See *Ojeda-Vinales v. INS*, 523 F.2d 286, 287–88 (2d Cir. 1975). Apparent ethnicity, presence in a public place, or travel through an airport cannot supply the missing basis. See *United States v. Brignoni-Ponce*, 422 U.S. 873, 884–87 (1975). And where statements are obtained through an egregious Fourth Amendment violation, they may be subject to suppression in immigration proceedings. *Cotzojay v. Holder*, 725 F.3d 172, 182–83 (2d Cir. 2013); *Pretzantzin v. Holder*, 736 F.3d 641, 651–52 (2d Cir. 2013). At minimum, Respondents cannot rely on the fruits of an unlawful seizure to supply the missing basis for custody.

IX. ICE failed to comply with the mandatory arrest and custody regulations.

The regulatory violations are independent grounds for habeas relief under the *Accardi* doctrine. Agencies must follow their own binding regulations, especially where the regulations protect liberty. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974); *Montilla v. INS*, 926 F.2d 162, 166–69 (2d Cir. 1991); *Singh v. U.S. Dep't of Just.*, 461 F.3d 290, 296 (2d Cir. 2006).

If ICE arrested Petitioner without a warrant, 8 C.F.R. § 287.3 required post-arrest examination by an officer other than the arresting officer, advisals of the reasons for arrest and right to counsel, and a custody determination within 48 hours absent emergency or extraordinary circumstances. Respondents have produced no record showing compliance.

If ICE treated Petitioner as detained under § 1226, 8 C.F.R. § 236.1 required a custody determination and provided the mechanism for review. Respondents produced no Form I-286 and no custody determination.

If ICE treated Petitioner as detained under § 1231, 8 C.F.R. § 241.4 required, at minimum, a reasoned detention decision and custody-review process. Section 241.4(d) provides that a copy of any decision to detain must be provided to the detained noncitizen, and a decision to retain custody must set forth the reasons. If release was revoked, § 241.4(l) required notice and a prompt informal interview. Respondents produced no such decision, notice, or interview record.

The Government may not avoid all three regimes by invoking § 1231 in a declaration while refusing to produce the documents that would show what actually occurred. If § 1226 applies, Petitioner was denied the custody determination and review that statute and regulation require. If § 1231 applies, Petitioner was denied the reasoned decision, notice, and process required by the regulations and the Constitution. If the arrest was warrantless, § 1357 and § 287.3 were violated. Under any framework, the detention is unlawful.

Recent habeas decisions have treated these regulatory requirements as real, not decorative. In *Funes Gamez*, Judge Engelmayer held that ICE violated both its regulations and due process when it took a noncitizen into custody without the notice and prompt informal interview required by § 241.4(l), and ordered immediate release. 2025 WL 3263896, at *14–25. In *Zhu*, Judge Rochon held that ICE's failure to provide notice, reasons, and an informal interview before re-detention under § 1231 created an unacceptable risk of erroneous deprivation. 798 F. Supp. 3d at 408–15. In *E.M.M.*, Judge Garnett held that ICE could not sustain detention where the order of supervision was not validly revoked by an authorized official under the governing regulations. 2025 WL 3077995, at *5–6. In *Roman-Cruz*, Judge Abrams ordered release where the petitioner had a prior expedited removal/reinstatement history, CAT withholding, and a renewed third-country-removal effort, because the revocation was not authorized and due process was violated. 2026 WL 114936, at *1–3. In *Ndoye*, Judge Broderick held that the § 241.4(l) framework must be read as a unified revocation procedure and that ICE's failure to follow it required relief. No. 25-CV-8856 (VSB), slip op. at 6–16. In *Zhang v. Genalo*, Judge Morrison applied the same principles in EDNY and ordered release. 2025 WL 3733542, at *8–16.

These cases matter because Respondents' return does not merely omit a technical paper. It omits the documents that would show compliance with the procedures that make detention lawful. Where the record does not show that an authorized official made a custody decision, stated reasons, provided notice, allowed a response, or considered release, the Court cannot infer compliance. The missing record is the violation.

X. The Due Process Clause independently required notice and an opportunity to be heard.

Even apart from the regulations, due process required meaningful process before or promptly after ICE deprived Petitioner of liberty. The Fifth Amendment protects all "persons" in the United States, including noncitizens. *Zadvydas*, 533 U.S. at 693. Freedom from imprisonment lies at the heart of the liberty protected by the Due

Process Clause. Id. at 690. Courts apply *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what process is required in civil immigration detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 851–56 (2d Cir. 2020); *Black v. Decker*, 103 F.4th 133, 150–53 (2d Cir. 2024).

The *Mathews* factors strongly favor Petitioner.

The private interest is the most fundamental one: freedom from physical imprisonment. Petitioner is detained at MDC Brooklyn, separated from his family, including his [redacted] U.S.-citizen daughter, and unable to assist meaningfully in his immigration case or family life.

The risk of erroneous deprivation is extremely high because the procedures were essentially nonexistent. ICE did not provide a written custody decision. It did not produce the alleged I-205. It did not produce an I-286. It did not identify the decisionmaker. It did not state the statutory basis at the time of arrest. It did not allow Petitioner to present evidence. It did not make a contemporaneous finding of danger or flight risk. It did not explain why alternatives to detention were inadequate. It did not provide a prompt hearing before a neutral decisionmaker.

The Government's interest would not be undermined by minimal procedures. Notice, a written custody decision, and an opportunity to respond impose minimal burden. ICE already must prepare custody documents in the ordinary course. And any legitimate interest in ensuring removal or appearance can be addressed through conditions of release, reporting, bond, or other alternatives. What the Government lacks is any legitimate interest in imprisoning a person without process.

The recent cases apply these principles in precisely this context. In *Zhu*, Judge Rochon held that the liberty interest was obvious because freedom from imprisonment is at the core of due process, and that a person re-detained without notice or explanation suffers a high risk of erroneous deprivation. 798 F. Supp. 3d at 408–14. **In *Diallo*, Judge Subramanian adopted that analysis for a petitioner with no OSUP, reasoning that the absence of formal supervision did not mean the absence of due process.** No. 25-CV-9909 (AS), slip op. at 6–8. **In *Zhang v. Bondi*, Judge Oetken held that these protections apply "no less" to a person with a felony conviction and a final removal order**. No. 25-CV-10418 (JPO), slip op. at 3–4. In *Rodriguez-Acurio*, Judge Choudhury held that no one at DHS or ICE had made an individualized flight-risk or safety determination before the petitioner was suddenly arrested, and that detention without notice or an opportunity to be heard violated due process. No. 2:25-CV-6065 (NJC), slip op. at 3, 54–60.

This case fits that line. ICE arrested Petitioner at a domestic airport, provided no custody process, and now asks the Court to accept a declaration in place of a record. Due process requires more.

The "detain first, explain later" model has been repeatedly rejected. In *Chipantiza-Sisalema v. Francis*, No. 25-CV-5528 (AT), 2025 WL 1927931, at *3–4 (S.D.N.Y. July 13, 2025), the court ordered release where ICE summarily detained the petitioner without notice or opportunity to be heard. In *Khabazha v. U.S. Immigration & Customs Enforcement*, No. 25-CV-5279 (JMF), 2025 WL 3281514, at *8 (S.D.N.Y. Nov. 25, 2025), Judge Furman ordered restoration of the status quo ante and barred deprivation of liberty without the requisite procedural protections. These cases reinforce the same rule: where the Government takes liberty first and supplies process later, the constitutional injury has already occurred.

XI. Respondents' "imminent removal" argument does not defeat habeas review or excuse unlawful detention.

Respondents emphasize that ICE has Petitioner's Salvadoran passport and that this Court's order is the "sole impediment" to removal. That argument should be rejected.

First, the fact that removal may be logistically possible does not answer whether detention is lawful. Habeas exists to determine whether the custodian may restrain liberty. If the restraint is unlawful, release is the ordinary remedy, even where the Government has an interest in removal.

Second, Respondents' position would allow ICE to defeat habeas jurisdiction by moving quickly. The faster ICE can schedule a transfer or removal flight, the less process it would need to provide. That is backwards. The risk of removal before meaningful review is precisely why § 2243 requires prompt judicial action and why courts preserve the status quo in immigration habeas cases.

Third, the requested relief does not vacate the removal order. If the Government later lawfully executes removal in compliance with all applicable statutes, regulations, stays, and court orders, the habeas court's detention ruling will not prevent it. But ICE may not imprison Petitioner now without proving lawful custody authority.

Fourth, Respondents' own failure to produce the record makes any imminence claim unreliable. The Court has not been given the actual warrant of removal, travel packet, custody decision, service records, or removal logistics. A bare assertion that a passport exists does not satisfy § 2243.

Fifth, *Zadvydas* does not create an "imminence exception" to due process. The Supreme Court held that detention under § 1231(a)(6) must remain reasonably related to removal and subject to constitutional limits. 533 U.S. at 689–701. It did not hold that whenever ICE claims to have a travel document, a habeas court loses power to review the lawfulness of custody.

The case law is clear. In *Zhu*, the Government represented that China had recently accepted removals and that ICE was working to obtain travel documents, but the court still ordered release because the custody process was unlawful. 798 F. Supp. 3d at 403–04, 414–15. In *Roman-Cruz*, the Government asserted changed circumstances based on a new third-country removal attempt, but the court ordered release because the revocation was unauthorized and violated due process. 2026 WL 114936, at *1–3. In *Xu*, the Government's "imminent removal" assertion was undermined by the record, and the court granted habeas. No. 25-16274 (BRM), slip op. at 2–7. These cases show that logistical removability is not a substitute for lawful custody.

XII. The old in absentia order does not cure the custody defect.

Respondents rely heavily on the 2006 in absentia order and the April 29, 2026 denial of Petitioner's motion to reopen. Those documents do not resolve this habeas case.

Petitioner does not ask this Court to reopen the immigration proceedings. He recognizes that challenges to the validity of the removal order ordinarily proceed through EOIR and the court of appeals. But when the Government uses an old order as the basis for present detention, it must still prove that detention is lawful. A removal order is not a custody determination. An immigration judge's later denial of reopening for lack of diligence is not a finding that ICE complied with the Fourth Amendment, § 1357, § 287.3, § 236.1, § 241.4, or due process when it arrested Petitioner at JFK.

Nor does the in absentia order establish danger or flight risk. It does not address Petitioner's present family ties, residence, daughter, criminal history, eligibility for relief, or alternatives to detention. It does not explain why detention at MDC is necessary today. The Government cannot substitute a twenty-year-old in absentia order for a current custody determination.

This point is strongly supported by the case law. In *Funes Gamez*, the petitioner had a 2004 in absentia removal order and had even been removed to Honduras in 2009; the court still ordered release because ICE violated custody procedures when it re-detained her. 2025 WL 3263896, at *4–7, *24–25. **In *Zhang v. Genalo*, the petitioner had an old in absentia deportation order and was still released because ICE failed to comply with post-order custody procedures.** 2025 WL 3733542, at *8–16. **In *Diallo*, the petitioner's 2012 final order did not prevent release because § 1231 did not supply a free-roaming power to arrest her years later.** No. 25-CV-9909 (AS), slip op. at 2–8. These cases make clear that the existence of a prior order does not end the habeas inquiry.

The old order also cannot substitute for the missing I-205 and custody paperwork. If Respondents contend that the 2026 I-205 authorized the arrest, they must produce the 2026 I-205. If Respondents contend that the 2006 I-205 remained operative or was reissued, they must produce the 2006 I-205. If Respondents contend that Petitioner's release on recognizance was cancelled, they must produce the cancellation notice, proof of service, reasons, and authority. If Respondents contend that § 1231(a)(6) discretion was exercised, they must produce the decision, reasons, and custody-review record. They have produced none of those documents.

The Court can assume, solely for purposes of deciding this habeas petition, that the 2006 order exists and still conclude that present detention is unlawful. That is because this petition turns on custody. A removal order may authorize removal through lawful procedures; it does not authorize detention by any means, at any time, without notice, without a custody decision, without records, and without due process.

XIII. The airport seizure also taints any post hoc reliance on statements or documents obtained during the arrest.

Respondents' declaration says ICE officers approached Petitioner, asked pedigree questions, obtained his Salvadoran passport, and then placed him under arrest pursuant to the alleged 2026 I-205. Irving Decl. ¶ 14. That sequence underscores the Fourth Amendment problem. If Petitioner was already seized when the questions were asked and the passport was obtained, then the Government cannot rely on those answers or the passport production to justify the seizure that had already occurred.

Civil immigration proceedings do not automatically apply the exclusionary rule in every case, but the Supreme Court and Second Circuit recognize suppression where violations are egregious or fundamentally unfair. *Lopez-Mendoza*, 468 U.S. at 1050–51; *Cotzojay*, 725 F.3d at 182–83; *Pretzantzin*, 736 F.3d at 651–52. Following a domestic traveler into a secure-area restroom, using aviation-security information for civil immigration enforcement, restraining him without a produced warrant, preventing him from boarding a domestic flight, withholding the basis for custody, and then using answers obtained during that encounter to justify detention presents precisely the kind of constitutional problem habeas exists to remedy.

At minimum, the Court should not credit any post hoc theory that depends on facts learned only after ICE restrained Petitioner. The legality of the arrest and initial custody decision rose or fell at JFK, when officers seized him and deprived him of liberty. It cannot be repaired by later paperwork or later statements.

XIV. The proper remedy is release.

The ordinary habeas remedy for unlawful executive detention is release. *Preiser*, 411 U.S. at 484; *Munaf*, 553 U.S. at 693–94; *Fay v. Noia*, 372 U.S. 391, 400–02 (1963). Recent immigration habeas cases have ordered release where ICE failed to provide required custody process. *Funes Gamez*, 2025 WL 3263896, at *24–25; *Zhu*, 798 F. Supp. 3d at 414–15; *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 499 (S.D.N.Y. 2025); *Diallo*, No. 25-CV-9909 (AS), slip op. at 7–8; *Zhang v. Genalo*, 2025 WL 3733542, at *16; *Roman-Cruz*, 2026 WL 114936, at *2–3; *Ndoye*, No. 25-CV-8856 (VSB), slip op. at 5–6, 16; *Zhang v. Bondi*, No. 25-CV-10418 (JPO), slip op. at 8–9; *Padilla Molina*, No. 25-CV-6526 (JMA), slip op. at 1–3; *Ye*, No. 25-CV-6417 (AMD), slip op. at 1, 21.

Release is especially appropriate because Respondents have not shown that Petitioner is dangerous. They identify no criminal history. They identify no violence, no threat, no public-safety risk, and no individualized flight-risk analysis. Petitioner has lived in the United States for approximately two decades, has a stable address in New York, has an eight-year-old U.S.-citizen daughter, and has counsel. If conditions are necessary, the Government can seek lawful conditions through lawful process. What it cannot do is detain him first and justify later.

The prior-removal-order cases confirm that release, not only a future hearing, is the proper remedy where the custody decision itself was unlawful. In *Diallo*, the court ordered release even though the Government invoked § 1231 and a prior final order. No. 25-CV-9909 (AS), slip op. at 7–8. In *Zhang v. Genalo*, this District ordered immediate release despite an old in absentia deportation order. 2025 WL 3733542, at *16. In *Funes Gamez*, *Zhu*, *E.M.M.*, *Roman-Cruz*, *Ndoye*, and *Zhang v. Bondi*, courts ordered release because ICE failed to comply with the procedures required before re-detention or revocation. *Funes Gamez*, 2025 WL 3263896, at *24–25; *Zhu*, 798 F. Supp. 3d at 414–15; *E.M.M.*, 2025 WL 3077995, at *6; *Roman-Cruz*, 2026 WL 114936, at *2–3; *Ndoye*, No. 25-CV-8856 (VSB), slip op. at 16; *Zhang v. Bondi*, No. 25-CV-10418 (JPO), slip op. at 8–9. In *Padilla Molina* and *Ye*, EDNY courts ordered release where ICE arrested long-resident individuals in the interior without the proper individualized custody process. *Padilla Molina*, No. 25-CV-6526 (JMA), slip op. at 1–3; *Ye*, No. 25-CV-6417 (AMD), slip op. at 1, 21.

Conclusion

Respondents' submission confirms that ICE has not produced the custody record required to justify imprisonment. Their jurisdictional theory is foreclosed by habeas principles and by the distinction between custody challenges and removal-order review. Their § 1231 theory does not authorize no-process detention. Their "no order of supervision" argument does not eliminate due process. Their "imminent removal" argument does not defeat habeas jurisdiction. And their airport facts show a planned interior arrest of a domestic traveler, not a border inspection or aviation-security search.

The recent habeas cases supply the governing rule. In *Diallo*, the court ordered release after an airport arrest under an old final order because § 1231 was not a free-roaming arrest power. In *Funes Gamez*, the court ordered release where ICE took a mother into custody at a check-in without the required notice and interview. In *Zhu*, the court ordered release where ICE re-detained a 67-year-old man and failed to provide notice or an interview even while claiming removal efforts were underway. In *Roman-Cruz* and *E.M.M.*, courts ordered release where revocation

was not authorized. **In *Zhang v. Bondi* and *Zhang v. Genalo*, courts held that due process applies even to persons with final orders and serious criminal histories**. In *Ndoye*, the court rejected the Government's attempt to treat administrative arrest and revocation authority as limitless. In *Rodriguez-Acurio*, *Padilla Molina*, *Ye*, and *Guzman Cardenas*, EDNY and SDNY courts rejected shifting statutory labels and no-process interior re-detention of long-resident noncitizens.

Petitioner's case is at least as strong. He was arrested inside JFK while traveling domestically, allegedly in a restroom, after ICE used advance TSA/domestic-flight information. Respondents produced no actual warrant, no I-213, no I-286, no custody determination, no cancellation notice, no custody review, and no individualized danger or flight-risk finding. The Great Writ requires more.

For these reasons, Petitioner respectfully requests that the Court grant the writ and order his immediate release.

Respectfully submitted,

/s/ S. Michael Musa-Obregon

S. Michael Musa-Obregon