UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Jaime David CAMARGO ECHEA

Petitioner,

v.

Todd BLANCHE, Acting Attorney General of the United States;

Kenneth GENALO, Director, New York Field Office, ICE Enforcement and Removal Operations Division;

Markwayne MULLIN, Secretary of Homeland Security;

Daren K. MARGOLIN, Director, Executive Office for Immigration Review;

Raul MALDONADO JR., Warden, Metropolitan Detention Center; and

Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. 26-2527

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Jaime David Camargo Echea is a 44-year-old Peruvian national who arrived in the United States in August, 2022 after fleeing political and gang persecution. Mr. Camargo encountered immigration agents at the U.S. border; he was detained pursuant to a warrant, placed in expedited removal proceedings, and given a credible fear interview. Mr. Camargo later established a credible fear before an immigration judge. He was placed into removal proceedings pursuant to 8 U.S.C. § 1229a. On or about October 4, 2022, a determination was made that Mr. Camargo neither posed a security risk nor a risk of absconding and that he warranted release because of an "urgent humanitarian reason" or "significant public benefit." *See* 8 C.F.R. § 212.5(b). On October 5, 2022, Mr. Camargo was released from detention. On October 6, 2022, Immigration and Customs Enforcement ("ICE") served Mr. Camargo with an Interim Notice Authorizing Parole.

2. The interim notice stated that ICE "has decided to parole you from its custody pursuant to its authority under section 212(d)(5)(A) of the Immigration and Nationality Act." *See* Interim Notice Authorizing Parole, attached hereto as **Exhibit A**. The Interim Notice continued that the authorization "is valid for one year beginning from the date on this notice and will automatically terminate upon your departure or removal from the United States or at the end of the one-year period unless ICE provides you with an extension at its discretion." *Id.* "ICE may also terminate parole on notice prior to the automatic termination date." *Id.* "Parole is entirely within the discretion of ICE and can be terminated at any time and for any reason." *Id.* As part of

his conditions for release, Mr. Camargo had to notify both ICE and the immigration judge of any address change, appear for every scheduled hearing before both the immigration judge and ICE, and not violate any local, state, or federal laws or ordinances. *Id.*

3. However, more than three years later, on or about February 22, 2026, Mr. Camargo was seized by ICE agents in Valley Stream, New York, while he was working. ICE transported Mr. Camargo first to Delaney Hall, then to the Metropolitan Detention Center ("MDC"), where he remains at the time of filing of this petition.

4. There have not been—nor have Respondents alleged any—material changes in circumstances since Petitioner was released from detention and later paroled under section 212(d)(5)(A) of the Immigration and Nationality Act. The abrupt arrest and re-detention of Mr. Camargo were wholly unjustified and executed without any individualized consideration of his circumstances. In fact, there have been no changes in circumstances that would justify characterizing him as a flight risk or danger to the community. Mr. Camargo was and remains in full compliance with his conditions of release.

5. Respondents' unwarranted re-detention of Mr. Camargo, without any individualized consideration of his risk of flight or danger to the community, without evidence of changed circumstances, and without notice and opportunity to respond, violates his rights to due process under the Fifth Amendment. Accordingly, Mr. Camargo seeks a writ of habeas corpus that orders his immediate release on the grounds that his re-detention was unlawful, or alternatively, grant the habeas corpus upon a determination that his detention falls under § 1226(a), along with an order for a bond hearing to be held within seven days.

PARTIES

6. Petitioner, Jaime David Camargo Echea, is a citizen of Peru who was placed in detention on or about February 22, 2026. ICE arrested Mr. Camargo in New York and initially transferred him to Delaney Hall. He was later transferred to MDC, located at 80 29th St., Brooklyn, NY. He is in the custody and under the direct control of Respondents and their agents.

7. Respondent, Todd BLANCHE, is the Acting Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates are component agencies. He is named in his official capacity.

8. Respondent, Kenneth GENALO, is the Director of the New York Field Office of ICE's Enforcement and Removal Operations Division. As such, Respondent Genalo is responsible for Petitioner's detention. He is named in his official capacity.

9. Respondent, Markwayne MULLIN, is the Secretary of the Department of Homeland Security. He is responsible for the implementation and enforcement of the Immigration and Nationality Act (INA) and oversees ICE, which is responsible for Petitioner's detention and removal. Respondent Mullin has ultimate custodial authority over Petitioner and is named in his official capacity.

10. Respondent, Daren K. MARGOLIN, is the director of the Executive Office for Immigration Review (EOIR), which is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings. He is named in his official capacity.

11. Respondent, Raul MALDONADO, JR., is employed by the Bureau of Prisons as Warden of the MDC, where Petitioner is detained. He has immediate physical custody of Petitioner. He is named in his official capacity.

12. Respondent, Todd M. LYONS, is Acting Director of ICE. He directs ICE operations and is responsible for the administration and enforcement of immigration laws nationwide. He is named in his official capacity.

JURISDICTION

13. Petitioner is in the physical custody of Respondents. Petitioner is detained by ICE at MDC in Brooklyn, New York. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*

14. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). The federal district courts have jurisdiction to hear habeas corpus claims by noncitizens challenge the lawfulness of their detention by DHS. *See, e.g.*, *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was properly ordered removed under 8 U.S.C. § 1225(b)(1).

15. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, the All Writs Act, 28 U.S.C. § 1651, and 5 U.S.C. § 706 (APA).

VENUE

16. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue lies in the United States District Court for the Eastern District of New York, the judicial district in which Petitioner currently is detained.

17. Venue is also proper in this District pursuant to 28 U.S.C. § 1391(e) because Respondents are employees, officers, and agencies of the United States, and because a substantial part of the events or omissions giving rise to the claims occurred in the Eastern District of New York.

REQUIREMENTS OF 28 U.S.C. § 2243

18. The Court must grant the petition for writ of habeas corpus or order Respondents to show cause "forthwith" unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, Respondents must file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

19. 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) (internal quotation marks omitted).

EXHAUSTION

20. Petitioner is not required to exhaust administrative remedies. Exhaustion of administrative remedies in immigration detention cases is a prudential concern, not a statutory requirement, *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025); *Montoya v. Bondi*, -

-- F. Supp. 3d ----, 2025 WL 3718694, at *2, n.3 (E.D.N.Y. Dec. 23, 2025), and exhaustion may be excused when any of the following apply: "(1) available remedies provide no genuine opportunity for adequate relief; (2) irreparable injury may occur without immediate judicial relief; (3) administrative appeal would be futile; and (4) in certain instances a plaintiff has raised a substantial constitutional question," *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

21. Petitioner's case meets not just one but all of these requirements. Not only will he face irreparable injury if his detention continues, and not only does this petition raise substantial constitutional questions, but intervening events have rendered administrative appeal futile and unable to provide a genuine opportunity for adequate relief.

22. Specifically, on September 5, 2025, the Board of Immigration Appeals (BIA) decided *Matter of Yajure Hurtado*, a precedential decision finding that all noncitizens who, like Petitioner, have not been admitted to the United States are per se ineligible for bond, even if they are neither a danger nor a flight risk. 29 I. & N. Dec. 216 (BIA 2025). Thus, the BIA is bound to find that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225(b)(2)(A) and deny his release – notwithstanding that the overwhelming majority of district courts in the country that have considered this reading of the statute has rejected it out of hand.[1]

STATEMENT OF FACTS

23. Petitioner, Jaime David Camargo Echea, is a 44-year-old Peruvian national. Mr. Camargo arrived in the United States in August 2022, after fleeing political and gang persecution. In Peru, Mr. Camargo was [redacted]

[1] *See* discussion and citations, ¶ 46, *infra*.

[redacted].

24. Mr. Camargo entered the United States in August 2022. U.S. Customs and Border Protection ("CBP") issued a warrant for his arrest on or about August 25, 2022, and detained him at the Rio Grande Valley Sector Centralized Processing Center. While in detention, Mr. Camargo was placed in expedited removal proceedings, and he was given a credible fear interview. Mr. Camargo did not establish a credible fear with the asylum officer, but requested review by the immigration judge, who found that Mr. Camargo established a credible fear, and later placed him into removal proceedings pursuant to 8 U.S.C. § 1229a.

25. On or about October 4, 2022, a determination was made that Mr. Camargo neither posed a security risk nor a risk of absconding and that he warranted release because of an "urgent humanitarian reason" or "significant public benefit." On October 5, 2022, Mr. Camargo was released from detention. On October 6, 2022, ICE served Mr. Camargo with an Interim Notice Authorizing Parole. As part of his conditions for release, Mr. Camargo had to notify both ICE and the immigration judge of any address change, he had to appear for every scheduled hearing before both the immigration judge and ICE, and he must not violate any local, state, or federal laws or ordinances.

26. After his release, Mr. Camargo was placed in a shelter in Louisiana. He then took a bus to New York, where he lived with his niece, a lawful permanent resident. Eventually, he was able to find work in the field of construction. He worked in construction until around December 2024. In December 2024, he applied for a TLC license and was granted the license in January 2025. He initially began driving for Uber and Access-a-Ride. At the end of February 2025, he started to work as a driver for Uber Eats, Lyft, Walmart, and Instacart.

27. While waiting for his immigration case to proceed, Mr. Camargo filed his pro se I-589 application with the New York Immigration Court on July 5, 2023. Mr. Camargo attended all his immigration court hearings as scheduled, at 26 Federal Plaza, New York, New York. Mr. Camargo's Individual Hearing ("IH") was initially scheduled for June 12, 2024, later changed to Oct 27, 2026. Consistent with the conditions of his parole, Mr. Camargo updated the court and served the Department of Homeland Security ("DHS") when he changed his address.

28. On or about February 22, 2026, Mr. Camargo was working at Walmart in Valley Stream, New York, when two ICE vehicles blocked him in from both the front and the back of his car in order to prevent him from leaving. The ICE agents approached his car and asked him if he was "Jaime." Mr. Camargo confirmed that he was. An ICE agent requested his driver's license, and he provided it to them. Mr. Camargo was prepared to provide the agents with his registration and insurance, but they arrested him instead.

29. At the time of Mr. Camargo's arrest, he had a pending asylum application, a social security card, and a work permit. ICE arrested Mr. Camargo even though he has no criminal convictions in the United States, he has never been arrested outside of his two interactions with ICE, he has continuously resided in the United States for over three years, he was gainfully employed, he paid his taxes, and he was in full compliance with all the conditions of his release.

30. ICE initially transferred Mr. Camargo to Delaney Hall, but eventually transferred him to MDC in Brooklyn, where he remains today.

31. Following his ICE detention, Mr. Camargo was able to secure pro bono counsel through the New York Immigration Family Unity Project ("NYIFUP") to assist with his removal proceedings and his application for asylum. On March 30, 2026, Karene Brown began

representing Mr. Camargo in his removal proceedings. Mr. Camargo is now scheduled to appear on May 20, 2026 for a merits hearing on his application for asylum.

32. Mr. Camargo remains in ICE detention without the opportunity for bond in light of ICE's current blanket policy of denying all requests for discretionary release on parole. Without relief from this court, Mr. Camargo will face the prospect of months, or even years, in immigration custody, separated from his family and community without any individualized review or assessment of the need for detention.

33. Mr. Camargo remains more afraid than ever of being deported to Peru. After Mr. Camargo fled Peru in 2022, a gang kidnapped [redacted] Mr. Camargo suffers irreparable harm each day he remains in ICE detention.

LEGAL BACKGROUND

Immigration Detention Framework

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

35. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an Immigration Judge (IJ). *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

36. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

37. Finally, the INA provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

38. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

39. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C. § 1226(a)(2)(A)–(B).20.

40. Under Section 1226, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See, e.g., Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 283 (E.D.N.Y. 2025) ("Section 1226(a) … permits detention when a DHS officer has made an individualized determination that a noncitizen poses a flight or safety risk"). If, after individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. § 1003.19.

41. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018) (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible for release.

42. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission, specifying that "if the examining officer determines that a[] [noncitizen] seeking admission is not

clearly and beyond a doubt entitled to be admitted, the [noncitizen] shall be detained for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

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

44. But on July 8, 2025, ICE, "in coordination with" the Department of Justice, rejected the well-established understanding of the statutory framework and reversed decades of practice. The policy[2] claims that all persons who entered the United States without inspection shall now be subject to the mandatory detention provision under § 1225(b)(2)(A), regardless of when or where a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

45. On September 5, 2025, the Board of Immigration Appeals adopted this same position in a published decision, *Matter of Yajure Hurtado*. 29 I. & N. Dec. 216 (BIA 2025). There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

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

46. Since Respondents adopted their new policy, innumerable district courts in the majority of circuits "ha[ve] concluded that the government's [new] position belies the statutory text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice." *Rodriguez v. Bostock*, 802 F. Supp. 3d 1297, 1304 (W.D. Wash. 2025) (collecting 22 recent cases rejecting the government's interpretation);[3] *see also Hyppolite v. Noem*, 808 F. Supp. 3d 474, 484 (E.D.N.Y. 2025) (finding that the government cannot point to an Article III court that has adopted their expansive construction of § 1225(b)(2)); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *7 (E.D.N.Y. Oct. 5, 2025) (same). *But cf. Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 508 (5th Cir. 2026) (holding that noncitizens in removal

[3] *See, e.g., Lopez Benitez v. Francis*, 25 CIV. 5937 (DEH), 2025 WL 2371588 (S.D.N.Y. Aug. 13, 2025); *Barbosa Da Cunha v. Moniz,* 6:25-cv-06532 (MAV) (W.D.N.Y. Oct. 20, 2025), *Aceros, v. Kaiser, et al.*, 25-CV-06924 (EMC), 2025 WL 2637503 (N.D. Cal. Sept. 12, 2025); *Maldonado Vazquez v. Feeley*, 2:25-CV-01542-RFB (EJY), 2025 WL 2676082 (D. Nev. Sept. 17, 2025); *Romero v. Hyde*, CV 25-11631 (BEM), 2025 WL 2403827 (D. Mass. Aug. 19, 2025); *Martinez v. Hyde*, CV 25-11613 (BEM), 2025 WL 2084238 (D. Mass. July 24, 2025) (denying government's motion for reconsideration); *Gomes v. Hyde*, No. 1:25-CV-11571 (JEK), 2025 WL 1869299 (D. Mass. July 7, 2025); *dos Santos v. Lyons*, No. 1:25-CV-12052 (JEK), 2025 WL 2370988 (D. Mass. Aug. 14, 2025); *Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025); *Aguilar Maldonado v. Olson*, --- F. Supp. 3d ----, 2025 WL 2374411 (D. Minn. Aug. 15, 2025); *Velasquez Salazar v. Dedos*, No. 25-cv-835, 2025 WL 2676729 (D.N.M. Sept. 17, 2025); *Beltran Barrera v. Tindall*, 3:25-CV-541 (RGJ), 2025 WL 2690565 (W.D. Ky. Sept. 19, 2025); *Lopez-Campos v. Raycraft*, 2:25-CV-12486, 2025 WL 2496379 (E.D. Mich. Aug. 29, 2025); *Reyes v. Raycraft,*, No. 25-CV-12546, 2025 WL 2609425 (E.D. Mich. Sept. 9, 2025); *Jimenez v. FCI Berlin, Warden*, 25-CV-326-LM-AJ, 2025 WL 2639390 (D.N.H. Sept. 8, 2025); *Choglo Chafla v. Scott*, 2:25-CV-00437 (SDN), 2025 WL 2688541 (D. Me. Sept. 21, 2025); *Arrazola-Gonzalez v. Noem*, No. 5:25-CV-01789-ODW (DFMX), 2025 WL 2379285 (C.D. Cal. Aug. 15, 2025) (granting individualized bond hearings on ex parte motion for temporary restraining order after finding likelihood of success); *Mosqueda v. Noem*, 5:25- CV-02304 CAS (BFM), 2025 WL 2591530 (C.D. Cal. Sept. 8, 2025) (same); *Kostak v. Trump*, CV 3:25-1093, 2025 WL 2472136 (W.D. La. Aug. 27, 2025) (same); *Garcia Jimenez v. Kramer*, No. 4:25CV3162, 2025 WL 2374223 (D. Neb. Aug. 14, 2025) (granting relief from stay of bond order pending BIA appeal); *Mayo Anicasio v. Kramer*, 2025 WL 2374224 (D. Neb. Aug. 14, 2025) (same).

proceedings who have not been admitted are subject to detention under § 1225(b)(2)(A)); *Avila v. Bondi*, No. 25-3248, 2026 WL 819258 (8th Cir. Mar. 25, 2026) (same). When considering this issue last November, Judge Kaplan of the Southern District marveled at the lopsided weight of judicial authority opposing the government's interpretation:

> This is not the first time the administration's change of heart has been challenged in court. By a recent count, the central issue in this case – the administration's new position that *all* noncitizens who came into the United States illegally, but since have been living in the United States, *must be detained* [under Section 1225(b)(2)(A)] until their removal proceedings are completed [] has been challenged in at least 362 cases in federal district courts. The challengers have prevailed, either on a preliminary or final basis, in 350 of those cases decided by over 160 different judges sitting in about fifty different courts spread across the United States. Thus, the overwhelming, lopsided majority have held that the law still means what it always has meant.
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> *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 494 (S.D.N.Y. 2025) (emphasis in original; citations omitted).

See also Sorto v. Mullin, 26-CV-2093, 2026 WL 1045449, at *2 (E.D.N.Y. Apr. 17, 2026) (disagreeing with *Buenrostro-Mendez* and *Avila* and noting that they are "non-binding").

47. The government's recently adopted position also ignores the text of § 1225(b)(2). For § 1225(b)(2) to apply, an examining immigration officer must make three separate determinations: that a person is 1) an applicant for admission; 2) seeking admission; and 3) not clearly and beyond a doubt entitled to be admitted. Section 1225(a)(1) defines an "applicant for admission" as [a noncitizen] present in the United States who has not been admitted or who arrives in the United States." The term "seeking admission . . . necessarily implies some sort of present-tense action." *Martinez v. Hyde*, No. CV 25-11613 (BEM), 2025 WL 2084238, at *6 (D. Mass. July 24, 2025). The government's interpretation that all inadmissible individuals are "seeking admission" within the meaning of § 1225(b) renders the meaning of the term identical

to the statutorily defined term "applicant for admission." Such an interpretation both impermissibly renders "seeking admission" as surplusage, and negates the plain meaning of the text.

48. The legislative history further shows that § 1226(a) "restates the [then-]current provisions in section 242(a)(1) regarding the authority of the Attorney General to arrest, detain, and release on bond a noncitizen who is not lawfully in the United States." *Rodriguez v. Bostock*, 779 F. Supp. 3d 1239, 1260 (W.D. Wash. 2025) (quoting H.R. Rep. No. 104-469, at 229 (1996)) (cleaned up). Indeed, shortly after enactment of the 1996 Immigration Reform Act, the former Immigration and Naturalization Service and the Executive Office for Immigration Review ("EOIR," which houses the Immigration Courts and BIA) issued an interim rule to implement the statute that expressly stated: "Despite being applicants for admission, aliens who are present without having been admitted or paroled (formerly referred to as aliens who entered without inspection) will be eligible for bond and bond redetermination." 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997).

49. Thus, for almost 30 years, all participants in the immigration system have understood that people arrested inside the United States generally fall within § 1226 for detention purposes and therefore, unless subject to bars not applicable here, are required to receive a bond hearing upon request—even if they initially entered the country without permission. Such a longstanding and consistent interpretation "is powerful evidence that interpreting the Act in [this] way is natural and reasonable." *Abramski v. United States*, 573 U.S. 169, 203 (2014) (Scalia, J., dissenting); *see also Bankamerica Corp. v. United States*, 462 U.S. 122, 130 (1983) (relying in part on "over 60 years" of government interpretation and practice to reject government's new proposed interpretation of the law at issue).

50. The Laken Riley Act amendments to § 1226 that occurred just last year, P.L. § 119-1, 139 Stat. 3, also confirmed the widespread understanding that individuals not admitted or paroled were still detained pursuant to § 1226(a) if they were detained while already in the United States. Congress expressly included inadmissible individuals who have been convicted of certain crimes as subject to mandatory detention under § 1226(c)(1)(E). If every noncitizen who was present without being admitted were already subject to mandatory detention under § 1225(b)(2), Congress would have had no reason to pass an entirely new provision in order to make those individuals subject to mandatory detention under § 1226(c)(1)(E) if they committed one of the listed crimes.

51. Petitioner was arrested after over three years of continuous presence in the United States, not while "seeking admission." His pending asylum application [and other forms of relief] do not constitute "seeking admission." *See Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *6, n.7 (S.D.N.Y. Aug. 13, 2025) ("[W]hat [Petitioner] seeks is not 'admission' or 'lawful entry' to the United States, but to obtain a lawful means to remain here. *See Remain*, Merriam-Webster, https://www.merriam-webster.com/dictionary/remain ('[T]o stay in the same place or with the same person or group') (last visited August 8, 2025).").

52. Accordingly, the mandatory detention provision of § 1225(b)(2)(A) does not apply to people like Petitioner, who have already entered and were residing in the United States at the time they were apprehended. His detention is governed by § 1226(a), and his continued detention under § 1225(b)(2) is in excess of statutory authority and *ultra vires*.

Noncitizens' Procedural Due Process Rights

53. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme

Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) (citations omitted).

54. Stated simply, "while [DHS] might want to enforce this country's immigration laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, No. 25-CV-267, 781 F. Supp. 3d 137, 144 (W.D.N.Y. 2025) (citing *United States* ex. rel. *Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

55. Moreover, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, 794 F.Supp.3d 128, 149 (W.D.N.Y. 2025).

56. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), to determine what due process requires. These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

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

E.g., *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 491 (E.D.N.Y. 2025); *H.A.C.F. v. Francis*, 2026 WL 861152 , at *1-2 (E.D.N.Y. Mar. 30, 2026); *see* 8 C.F.R. § 1236.1(c)(8) ("[T]he alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.").

58. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez*, 978 F.3d at 851) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 970 (N.D. Cal. Nov. 22, 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

59. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). And due process requires that "notice must be afforded within a reasonable time and in such a manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

60. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record

that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *E.g., Iza by Iza v. Larocco*, 814 F. Supp. 3d 357, 379 (E.D.N.Y. 2026) ("Respondents' detention of Mr. Iza with no notice or opportunity to be heard and no showing of changed circumstances following release on parole violated his procedural due process rights.") (citation omitted); *Valdez v. Joyce*, 803 F. Supp. 3d 213, 219 (S.D.N.Y. 2025).

61. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and give them notice and a meaningful opportunity to be heard when challenging their detention. Moreover, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation. *See, e.g., Lopez Benitez*, 2025 WL 2371588, at *14 ("Given the nature of the constitutional violation Mr. Lopez Benitez sustained here—i.e., Respondents' failure to conduct any kind of individualized assessment *before* detaining him—any post-deprivation review by an immigration judge would be inadequate.") (emphasis in original); *see also Chipantiza-Sisalema v. Francis*, 2025 WL 1927931, at *3 (S.D.N.Y. Jul. 13, 2025) (finding bond "hearing is no substitute for the requirement that ICE engage in a deliberative process prior to, or contemporaneous with, the initial decision to strip a person of the freedom that lies at the heart of the Due Process Clause.") (citation modified); *accord Kelly v. Almodovar*, 25 Civ. 6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025). This is particularly clear where the government has already made a determination that a person is not a flight risk or a danger, and no change of circumstance justifies re-detention. *E.g.*, *Padilla Molina v. Deleon*, No. 25-cv-6526 (JMA), 2025

WL 3718728, at *5 (E.D.N.Y. Dec. 23, 2025); *O.F.B. v. Maldonado*, 810 F. Supp. 3d 394, 402 (E.D.N.Y. 2025); *Hyppolite v. Noem*, 808 F. Supp. 3d 474, 491 (E.D.N.Y. 2025).

62. Nor does the fact of a noncitizen's parole having expired have any effect on this due process requirement. As a court in this District, citing the Second Circuit, has explained:

> "[T]he United States accepts an alien paroled under § 1182(d)(5)(A) into the country for as long as the humanitarian or public benefit purpose persists." *Cruz-Miguel v. Holder*, 650 F.3d 189, 198 (2d Cir. 2011). Moreover, when a noncitizen's parole is terminated automatically by the "expiration of the time for which parole was authorized," if the "exclusion, deportation, or removal order cannot be executed within a reasonable time, the alien shall again be released on parole unless ... public interest requires that the alien be continued in custody." 8 C.F.R. § 212.5(e)(1)–(2).

Rodriguez-Acurio v. Almodovar, 811 F. Supp. 3d 274, 294 (E.D.N.Y. 2025).

In the case of Mr. Camargo, notwithstanding the expiration of his parole, the government has not demonstrated—nor could it—any such public interest in his continuing in custody.

63. As a result, courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before his summary arrest while at work in his car. *See, e.g., Carmona v. Maldonado*, No. 26-CV-2005 (PKC), 2026 WL 972780, at *3 (E.D.N.Y. Apr. 10, 2026) ("Here, Respondents effectively admit that *they did not exercise discretion* to re-detain Petitioner; rather, they detained him under the incorrect assertion that his detention was mandatory") (emphasis in original); *Diallo v. Maldonado*, No. 25-CV-05740 (DG), 2025 WL 3158295, at *5 (E.D.N.Y. Nov. 12, 2025) ("Nor does the record reflect that Respondents made any assessment - much less an individualized assessment - before revoking Petitioner's parole."); *Campos v. Deleon*, No. 25-CV-10099 (LJL), 2025 WL 3514120, at *2 (S.D.N.Y. Dec. 8, 2025) (collecting cases).

64. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision makes clear that they chose to forgo any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226 – which provides the sole lawful authority for detaining individuals residing in the U.S.

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

66. No procedural alternative to release can serve as an effective remedy. *See, e.g., Rodriguez-Acurio,* 811 F. Supp. 3d at *319-20 (ordering release and explaining that "a post-deprivation bond hearing before a DHS officer or even an immigration judge would provide no genuine opportunity to relief because the detention without adequate pre-deprivation procedures has already been carried out.") (citations omitted); *Tumba v. Francis*, 813 F. Supp. 3d 394, 406 (S.D.N.Y. Nov. 4, 2025) (ordering release); *Hyppolite*, 808 F. Supp. 3d at 494 (same). Petitioner's detention was unlawful from the moment he was detained and then taken into custody. Respondents afforded him no process before detention and have baselessly asserted authority to subject him to mandatory detention. Their violation is particularly egregious given that they previously released him on a finding that he presented neither a danger nor a flight risk. Immediate release is the appropriate remedy.

67. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez*, 978 F.3d at 851. Although he submits this is insufficient to vindicate the immense due-process violation inherent in his detention, a bond hearing is a mechanism to mitigate his continued unlawful confinement.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:
VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a)

68. Petitioner realleges and incorporates by reference each and every allegation contained above.

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

70. Petitioner is detained under § 1226(a), as reflected by DHS's own documents, binding law, and longstanding historical practice. Yet DHS contends, following BIA caselaw, that Petitioner is subject to mandatory detention under § 1225(b)(2).

71. Section 1226(a) requires an individualized, pre-deprivation determination that a noncitizen whom Respondents intend to detain presents a danger or a flight risk.

72. ICE did not conduct an individualized determination of the propriety of Petition's detention before it detained him. There has been no material change in circumstances since ICE released Petitioner from custody pursuant to its discretionary authority under §1226(a). Petitioner has complied with all the requirements imposed on him when he was released on recognizance.

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

SECOND CAUSE OF ACTION:

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS U.S. CONST. AMEND. V

74. Petitioner realleges and incorporates by reference each and every allegation contained above.

75. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the [Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690.

76. In assessing whether a person has been deprived of the right to procedural due process, courts weigh the factors from *Mathews v. Eldridge*: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." 424 U.S. at 335.

77. Here, all three factors weigh in favor of finding that Respondents have violated Petitioner's right to procedural due process by asserting unlawful authority to subject him to mandatory detention, by affording Petitioner no process upon detention, and by providing Petitioner no way to meaningfully contest his unlawful detention.

THIRD CAUSE OF ACTION:

VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

78. Petitioner realleges and incorporates by reference each and every allegation contained above.

79. The Administrative Procedure Act permits a reviewing court, as relevant here, to "hold unlawful and set aside agency, findings, and conclusions found to be—(A) arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; [or] (D) without observance of procedure required by law[.]".

80. Agency action is arbitrary and capricious or an abuse of discretion where the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

81. Petitioner's detention is final agency action reviewable under the APA because it marks the consummation of DHS's decision-making process and determines his rights under law.

82. Petitioner's detention violates the APA in at least three ways:

a. Respondents' assertion of authority to subject Petitioner to mandatory detention under § 1225(b)(2)(A) is in excess of statutory authority or limitations, and is ultra vires;

b. Respondents' detention of Petitioner without the individualized determination as to danger and flight risk required by 8 U.S.C. § 1226(a) is an abuse of discretion and without observance of procedure required by law;

c. Respondents' detention of Petitioner without a showing of any changed circumstances since he was released on parole is arbitrary and capricious and an abuse of discretion.

83. Respondents' detention of Petitioner therefore violates the APA.

PRAYER FOR RELIEF

84. WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court or removing him from the United States pending the resolution of this case, pursuant to the All Writs Act;[4]
3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, including

[4] *See Local 1814, Intern. Longshoremen's Ass'n, AFL-CIO v. New York Shipping Ass'n, Inc.*, 965 F.2d 1224, 1237 (2d Cir. 1992) ("Once the district court acquires jurisdiction over the subject matter of, and the parties to, the litigation, the All Writs Act [28 U.S.C. § 1651] authorizes a federal court to protect that jurisdiction" (cleaned up)). *See also Ozturk v. Trump*, 779 F. Supp. 3d 462, 496 (D.Vt. 2025) (ordering Petitioner's transfer from Louisiana back to Vermont).

electronic monitoring, and enjoining any re-detention under the immigration laws of the United States, pending a final determination in his removal proceedings;

4. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for the Petitioner within seven days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:
    a. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;
    b. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and
    c. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.
5. Award Petitioner costs and reasonable attorneys' fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412; and
6. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: April 28, 2026
Chappaqua, NY

/s/ Donald R. Gordon

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Pro Bono Counsel for Petitioner

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

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

Dated: April 28, 2026
Chappaqua, NY

/s/ Donald R. Gordon
Donald R. Gordon (NYS Bar No. 5513056)

LOCAL CIVIL RULE 7.1(c) CERTIFICATE

I, Donald R. Gordon, an attorney duly admitted to practice before this Court, hereby certify, pursuant to Local Civil Rule 7.1(c) of the Local Rules of the United States District Court for the Eastern District of New York, that the foregoing Petition complies with the applicable word-count limitation set forth in that Rule, and exclusive of caption, table of contents, table of authorities, signature block, and this Certificate, contains **7,390** words, including footnotes and endnotes, as counted by the word-processing system used to prepare the Petition.

Dated: April 28, 2026
Chappaqua, NY

/s/ Donald R. Gordon
Donald R. Gordon (NYS Bar No. 5513056)