UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Marco Angel VASQUEZ REYES,

Petitioner,

v.

Raul MALDONADO JR., in his official capacity as Warden of Metropolitan Detention Center; Judith ALMODOVAR, in her official capacity as Field Office Director of Enforcement and Removal Operations, New York Field Office, Immigration and Customs Enforcement; Markwayne MULLIN, in his official capacity as Secretary, U.S. Department of Homeland Security; Todd BLANCHE, in his official capacity as Acting U.S. Attorney General; Daren K. MARGOLIN, in his official capacity as Director, Executive Office for Immigration Review

Respondents.

Case No. 2:26-cv-2907

PETITIONER'S REPLY IN SUPPORT OF HIS PETITION FOR A WRIT OF HABEAS CORPUS

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INTRODUCTION

In February of 2026, Petitioner Marco Angel Vasquez Reyes ("Petitioner" or "Mr. Vasquez Reyes") was detained by officers of the U.S. Immigration and Customs Enforcement ("ICE") who mistook him for someone else. Even after discovering that Mr. Vasquez Reyes was not the person they were looking for, the officers detained him anyway, subjecting Mr. Vasquez Reyes to mandatory detention without an individualized determination based on a statute that does not apply to him. The Second Circuit has now rejected the purported legal basis on which Respondents arrested and detained Mr. Vasquez Reyes. Nonetheless, Mr. Vasquez Reyes has remained incarcerated in the custody of Respondents for the past 3 months.

In his petition for a writ of habeas corpus, E.C.F. Nos. 1, 9, Mr. Vasquez Reyes challenges his detention by Respondents on the grounds that his detention—which was conducted pursuant to an inapplicable statute based on an erroneous and radical departure from well-established law—violated his constitutional right to due process. There is no dispute that Mr. Vasquez Reyes was arrested and detained pursuant to 8 U.S.C. § 1225(b)(2)(A), a statute that does not lawfully apply to him. Nor have Respondents offered any reason why their detention of Mr. Vasquez Reyes under § 1225(b), without any individualized determination, comported with the U.S. Constitution's guarantee of due process. Instead, Respondents offer only a *post hoc* recharacterization of their initially unlawful actions in detaining Mr. Vasquez Reyes, on the pretense that a new legal justification may retroactively cure what was illegal from the outset. It cannot. As set forth below and in the underlying petition, the

appropriate remedy for Respondents' constitutional violations is Mr. Vasquez Reyes's immediate release.

ARGUMENT

I. Respondents Do Not Contest that Petitioner Was Detained Pursuant to 8 U.S.C. § 1225(b), a Statute That Does Not Apply to Him.

First, Respondents do not contest that they detained Mr. Vasquez Reyes in February 2026[1] on the basis of a purported statutory authority which the Second Circuit has explicitly rejected. In their response, Respondents concede that immigration officers arrested Mr. Vasquez Reyes in Nassau County, New York due to a mistake of identity, suspecting that he was a *different* individual sought by ICE with a similar name. *See* Declaration of Deportation Officer Patrick Heerey, E.C.F. No. 13-1 ¶¶ 8–11. After discovering that Mr. Vasquez Reyes was someone else, but determining that he "lacked documentation permitting his lawful entry, presence, or transit through the United States," the officers detained him anyway. *See id.* at ¶¶ 10–11. There is no indication that any individualized factor—such as might show his dangerousness to the community or his risk of flight—weighed on the decision by the immigration officers to detain Mr. Vasquez Reyes, beyond his immigration status. *See id.*

As Respondents acknowledge, the basis of the government's decision to detain Mr. Vasquez Reyes was 8 U.S.C. § 1225(b)(2)(A). *See* E.C.F. No. 13-1. ¶ 11. Yet under

[1] Contrary to Respondents' claim, Mr. Vasquez Reyes has *not* been detained "less than two weeks." E.C.F. No. 13 at 5. As corroborated by Respondents' own submission of the deportation officer's declaration, see E.C.F. No. 13-1 ¶¶ 8–14, Mr. Vasquez Reyes has been detained in Respondents' custody for over 3 months.

binding Circuit law, that statutory provision is inapplicable to Mr. Vasquez Reyes. *See Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044, at *23 (2d Cir. April 28, 2026) (holding that the applicable statute of detention for noncitizens who enter without admission or inspection is 8 U.S.C. § 1226(a)). Respondents effectively concede this. *See* E.C.F. No. 13 at 1–2. Respondents do not purport to argue that their arrest and detention of Mr. Vasquez Reyes comported with the procedural requirements of § 1226(a).

Accordingly, Respondents' detention of Mr. Vasquez Reyes, on the basis of an inapplicable statutory provision, was unlawful from its outset. As described in more detail *infra*, the appropriate remedy for Respondents' unlawful detention of Mr. Vasquez Reyes is his immediate release.

II. Respondents Do Not Refute That Their Detention of Petitioner Based on a Statutory Misclassification Violated His Constitutional Right to Due Process.

Second, Respondents do not refute the constitutional issues raised in Mr. Vasquez Reyes's petition. *See* E.C.F. Nos. 1, 9 at ¶¶ 34–48. In particular, Respondents' detention of Mr. Vasquez Reyes, under an inapplicable statute and in the absence of the requisite procedures, violated his due process rights under the Fifth Amendment. *See Molina Lara v. Genalo*, 2:26-cv-1424 (PKC), 2026 WL 764539 at *3 (E.D.N.Y. Mar. 18, 2026) ("Respondents detained Petitioner pursuant to the wrong statute, without any individualized custody determination, prior notice, or opportunity to be heard. Accordingly, for the reasons set forth in the Court's prior decisions, and hundreds of other decisions across the country, Respondents' actions violated Petitioner's procedural due process rights."); *Barco Mercado v. Francis*, 811

F.Supp.3d 487, 504 (S.D.N.Y. 2025) (concluding that a petitioner's detention "pursuant to the wrong statute violated due process").

Importantly, 8 U.S.C. § 1226(a) requires the government to conduct an individualized review *prior* to detaining a noncitizen, to determine whether detention is even warranted. *See Hyppolite v. Noem*, 808 F.Supp.3d 474, 485 (E.D.N.Y. 2025) (citing *Velesaca v. Decker*, 458 F.Supp.3d 224, 241 (S.D.N.Y. 2020) (noting that the government "do[es] not dispute that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination")); *see also Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 494 (S.D.N.Y. Aug. 13, 2025) ("[I]t is clear that § 1226(a) requires some exercise of discretion when determining whether or not to detain a noncitizen in the first instance."). Bypassing that statutory requirement, Respondents subjected Mr. Vasquez Reyes to non-individualized, mandatory detention. *See Lopez Benitez,* 795 F.Supp.3d at 495. Respondents' "discretion-free detention" of Mr. Vasquez Reyes "abridged his rights under § 1226 and violated due process." *Yao v. Almodovar*, 813 F.Supp.3d 461, 476 (S.D.N.Y. Dec. 17, 2025). In their response, Respondents do not refute this.

Instead, Respondents have merely offered a *post hoc* excuse, recharacterizing their detention of Mr. Vasquez Reyes as being governed by the same statutory provision—8 U.S.C. § 1226(a)—which Respondents attempted *to avoid* when choosing to detain him from the start. *See* E.C.F. No. 13 at 2–3; *see also Inestroza Carbajal v. Frazier*, No. 26-CV-2778 (SJB), 2026 WL 1309265, at *1 (E.D.N.Y. May 12, 2026) ("[T]he ostensible reason [of using § 1225(b) detention authority] was to avoid the

procedural protections provided to a noncitizen under 8 U.S.C. § 1226."). Only *now*—3 months after Respondents deprived Mr. Vasquez Reyes of his liberty, and subsequent to his filing of the instant petition—do Respondents claim that his detention is lawful under § 1226. *See* E.C.F. No. 13 at 2; E.C.F. No. 13-1 ¶ 23 (stating that a "custody determination" under § 1226 was made on May 18, 2026).

Yet Respondents' new legal theory cannot cure the legal defect underlying their detention of Mr. Vasquez Reyes from its outset. As Respondents acknowledge, *see* E.C.F. No. 13 at 1, this Court has recently rejected the argument Respondents now advance—*i.e.*, that a post-*Barbosa da Cunha* reclassification of detention under color of § 1226(a) can legalize what began as an illegal detention under § 1225(b)—and ordered that petitioner's immediate release. *See Garcia v. Maldonado*, No. 2:26-cv-2560, Minute Entry and Order (E.D.N.Y. May 8, 2026) (DeArcy Hall, J.).[2]

Indeed, as courts have long recognized, Respondents' unlawful action cannot be retrofitted into a lawful one. The government is "bound by the bases it used to justify its decision—here the arrest and detention—in the first instance, not reasons it comes up with afterwards." *Inestroza Carbajal*, 2026 WL 1309265 at *2-3; *see also Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21, 24 (2020) ("The basic rule here is clear: An agency must defend its actions based on the reasons it gave when it acted," and a decision will not be upheld based on "impermissible post

[2] Upon information and belief, the undersigned does not have access to the filings in *Garcia* and cannot confirm the factual circumstances therein. However, based on the representations of Respondents, it appears that this Court's reasoning in *Garcia* should apply here as well.

hoc rationalization." (quotation omitted)); *Lincoln v. Turner*, 874 F.3d 833, 842 (5th Cir. 2017) ("[P]ost-hoc justifications based on facts later learned cannot support an earlier arrest."); *Rodriguez-Acurio v. Almodovar*, 811 F. Supp. 3d 274, 312 (E.D.N.Y. 2025) ("Once [a noncitizen] is detained under [§ 1225(b)], DHS cannot convert the statutory authority governing her detention from []§ 1226(a) to [§ 1226(a)] through the post-hoc issuance of a warrant." (quoting *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 n.4 (BIA 2025))), appeal dismissed, No. 26-0219, 2026 WL 1208948 (2d Cir. Feb. 25, 2026); *Singh v. Blanche*, No. 26-CV-2538, 2026 WL 1239057, at *4 (E.D.N.Y. May 6, 2026) ("ICE's detention of Mr. Singh from February 2, 2026 through April 30, 2026 was unlawful from its inception, notwithstanding Respondents' efforts at post-hoc rationalization based on its expansive interpretation of Section 1225(b)(2)."). Changes "in legal positions, post-hoc rationalizations, and attempts to remedy do not vitiate an arrest and detention that was illegal from its inception." *Inestroza Carbajal*, 2026 WL 1309265 at *12. Respondents' contentions otherwise should be rejected.

This is especially pertinent where, as here, Respondents' *post hoc* rationalization is apparently reasoned backward. As Respondents state in their response, Mr. Vasquez Reyes is detained pursuant to § 1226(a) simply because *Barbosa da Cunha* makes it so. *See* E.C.F. No. 13 at 2; *see also Inestroza Carbajal*, 2026 WL 1309265 at *1, n. 1 ("In what could be termed legal gaslighting, Respondents act—by not conceding the illegality of the initial detention—as if *Barbosa da Cunha* announced a mere change in law, permitting ongoing detention of individuals detained before April 28, 2026. But the Second Circuit ruled that the Respondents

had been acting illegally in violation of the [Immigration and Nationality Act]."). "*Because* Petitioner is detained under § 1226(a), on May 18, 2026, ICE provided Petitioner with an individualized custody determination[.]" E.C.F. No. 13 at 2 (emphasis added). In other words, the *basis* of the government's *post hoc* reclassification on May 18, 2026 was circular—it was based on the fact that he was *already* detained. Yet § 1226(a) and constitutional due process require that the government conduct an individualized assessment *prior* to detention. *See Lopez Benitez*, 795 F.Supp.3d at 494; *Inestroza Carbajal*, 2026 WL 1309265 at *3 ("There is a fundamental due process problem with proceeding with a custody determination weeks after arrest and detention.").

Accordingly, Respondents' attempt to reclassify the legal basis of Mr. Vasquez Reyes's detention does not cure the constitutional violation underlying his detention from its inception. As shown *infra*, the appropriate remedy is immediate release.

III. The Appropriate Remedy for Respondents' Violation of Petitioner's Constitutional Rights Is Immediate Release.

Third, this Court should reject Respondents' contention that the appropriate remedy is for Petitioner to seek administrative relief and that, accordingly, this Court lacks jurisdiction to review Petitioner's detention. *See* E.C.F. No. 13 at ¶ 3–4. There is no statutory requirement to exhaust administrative remedies where a noncitizen challenges the lawfulness of his immigration detention. *See Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010). Moreover, no exhaustion requirement applies to the claims raised in the instant petition because the immigration judge and the Board of Immigration Appeals lack jurisdiction to entertain constitutional challenges.

See Arango-Aradondo v. INS, 13 F.3d 610, 614 (2d Cir. 1994); *Matter of Valdovinos*, 18 I. & N. Dec. 343, 345–46 (BIA 1982) (disclaiming jurisdiction to rule on constitutionality of immigration statute); *O.F.C. v. Decker*, No. 22-cv-2255, 2022 WL 4448728, at *7 (S.D.N.Y. Sept. 12, 2022) (excusing exhaustion for due process argument because "the challenged procedures allegedly violated a source of law–the Constitution–that the [BIA] cannot consider").

It is a bedrock principal of habeas jurisprudence that this Court has authority to determine whether civil detention is constitutional. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody."). If anyone is, in fact, engaging in "gamesmanship" or "wast[ing] resources," *see* E.C.F. No. 13 at 2, 4, it is the Respondents through ignoring the plain requirements of the I.N.A., bypassing the due process guarantees of the U.S. Constitution, and now attempting a *post hoc* justification for their unlawful detention of Mr. Vasquez Reyes to avoid district court review. Courts in this Circuit and across the country have repeatedly rejected the Respondents' claims and ordered individuals released. *See, e.g., Cadena-Gallegos v. Bondi,* No. 2:26-CV-844 (NJC), 2026 WL 413673, at *5 (E.D.N.Y. Feb. 14, 2026).

Here, Mr. Vasquez Reyes is not seeking this Court's review of Respondents' *post hoc* detention determination under § 1226(a), made after Mr. Vasquez Reyes was already detained in Respondents' custody for 3 months. *See* E.C.F. 13 at 4; 13-1 ¶ 23. Rather, Mr. Vasquez Reyes asks this Court to remedy the violation of his constitutional rights by Respondents depriving him of liberty without due process

from the outset. This violation began at the inception of Petitioner's detention, when Respondents bypassed their statutory and regulatory requirements to conduct an *initial* individualized custody determination. *See Inestrozo Carbajal*, 2026 WL 1309265 at *2 (citing 8 C.F.R. § 236.1(c)(8)). "A post-detention bond hearing is not a substitute for this requirement." *Id.*; *see also Silva Rueda v. Catletti,* No. 26-CV-2977, 2026 WL 1194956, at *4 (S.D.N.Y. May 1, 2026) ("A bond hearing cannot retrospectively cure the due process violation, which derived from Petitioner's unlawful arrest and detention without the statutorily required exercise of discretion. . . . The harm began when Petitioner was detained without process and continues with each day he remains in custody." (quotations omitted)); *Chipantiza-Sisalema v. Francis*, 25 Civ. 5528 (AT), 2025 WL 1927931 at *3 (S.D.N.Y. Jul. 13, 2025) ("Such a 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.") (quotations omitted).

Upon finding a constitutional violation, this Court "may" grant a writ of habeas corpus and "dispose of the matter as law and justice require." 28 U.S.C. §§ 2241(a), 2243. As the U.S. Supreme Court has recognized, release from detention is the "typical remedy" for "unlawful executive detention." *Munaf v. Geren*, 553 U.S. 674, 693 (2008).

For the reasons set forth above and in the underlying petition, Respondents' detention of Mr. Vasquez Reyes was unlawful from the start, and continues to be unlawful, notwithstanding Respondents' attempt to justify it through a *post hoc*

reclassification. Mr. Vasquez Reyes respectfully asks this Court to order his immediate release with an order preventing re-detention until and unless Respondents provide notice and the opportunity to respond to any intent to re-detain him. *See Salgado v. Francis*, No. 25-CV-6524 (VEC), 2026 WL 915304, at *8 (S.D.N.Y. Apr. 3, 2026) (ordering that petitioner "shall not be re-detained by ICE without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where the Government will have the burden of showing that her detention is authorized under 8 U.S.C. § 1226(a)"); *Ccorihuaman v. Genalo*, No. 26-CV-00554 (HG), 2026 WL 328983, at *2 (E.D.N.Y. Feb. 6, 2026) (ordering the same); *Saavedra-Hernandez v. Francis*, No. 26-CV-00968 (HG), 2026 WL 563876, at *2 (E.D.N.Y. Feb. 27, 2026) (ordering the same); *Salazar v. Maldonado*, No. 26-CV-01580 (HG), 2026 WL 792499, at *2 (E.D.N.Y. Mar. 20, 2026) (same); *Mejia v. Maldonado*, No. 26-CV-01457 (NCM), 2026 WL 753029, at *2 (E.D.N.Y. Mar. 16, 2026) (same).

CONCLUSION

For the foregoing reasons, Mr. Vasquez Reyes respectfully requests that the Court grant his petition and order his immediate release, with an order preventing his re-detention unless Respondents provide Mr. Vasquez Reyes a pre-deprivation hearing at which the government bears the burden of proving that his detention is warranted.

Dated: May 26, 2026

Respectfully submitted by:

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