UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

C.A.M.R.,

Petitioner,

v.

MARKWAYNE MULLIN,
in his official capacity as Secretary, U.S. Department of Homeland Security;

KENNETH GENALO,
in his official capacity as Field Office Director, New York City Field Office, U.S. Immigration and Customs Enforcement;

TODD BLANCHE,
in his official capacity as Acting Attorney General, U.S. Department of Justice;

RAUL MALDONADO,
in his official capacity as Warden, Metropolitan Detention Center.

Respondents.

Civil Action No. 26-3369

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

INTRODUCTION

1. On or around February 24, 2026, Nassau County police stopped a taxi in which C.A.M.R.,[1] then twenty years old, was a passenger. The police turned C.A.M.R. over to U.S. Immigration and Customs Enforcement ("ICE"). ICE then purported to subject C.A.M.R. to mandatory detention under 8 U.S.C. § 1225(b)(2) simply because he entered the United States without inspection. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 228 (BIA 2025).

2. C.A.M.R. brings this habeas to challenge his unlawful detention.

3. Throughout the last year, Respondents have contended that "individuals living in the United States . . . were 'seeking admission' to the country," such that they were subject to mandatory detention under § 1225(b)(2). *See Inestroza Carbajal v. Frazier*, No. 26-CV-2778-SJB, 2026 WL 1309265, at *1 (E.D.N.Y. May 12, 2026).

4. The United States Court of Appeals for the Second Circuit rejected Respondents' strained statutory reading in *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026). *See* 175 F.4th at 69 (joining "the overwhelming majority of federal judges across the Nation . . . to conclude that the government's novel interpretation of the immigration statutes defies their plain text").

5. *Barbosa da Cunha* confirmed that C.A.M.R.'s "arrest and detention was illegal when it was initiated." *Inestroza Carbajal*, 2026 WL 1309265, at *1. Although Respondents are bound by *Barbosa da Cunha*, merely affording C.A.M.R. a bond hearing now, after more than two months of unlawful detention, cannot "vitiate an arrest and detention that was illegal from its inception." *Id.*

[1] A motion to proceed anonymously in this action, using initials only, will be filed concurrently with this Petition.

6. C.A.M.R.'s detention without any pre-deprivation process violates his procedural due process rights, and this Court should order his immediate release from ICE custody. *See id.* at *5; *see also, e.g.*, *Pastrana-Beltran v. Mullin*, No. 26-CV-2657 (RER), 2026 WL 1398609, at *1–*3 (E.D.N.Y. May 19, 2026) (ordering petitioner immediately released, as he had been unlawfully detained under § 1225(b)(2) in violation of his due process rights); *Singh v. Blanche,* No. 2:26-CV-02538 (NJC), 2026 WL 1239057, at *4–*5 (E.D.N.Y. May 6, 2026) (same); *Flores Garcia v. Immig. and Customs Enforcement*, No. 26-CV-02561, (NCM), 2026 WL 1194715, at *1–*2 (E.D.N.Y. May 1, 2026) (same); *Lin v. Genalo*, No. 2:26-CV-2409 (PKC), 2026 WL 1352428, at *1 (E.D.N.Y. May 1, 2026) (same); *Zhao v. Genalo*, No. 26-CV-2410 (AMD), 2026 WL 1157960, at *4–*5 (E.D.N.Y. Apr. 29, 2026) (same); *Moctar v. Francis*, No. 26-CV-02453 (OEM), 2026 WL 1170755, at *2–*3 (E.D.N.Y. Apr. 29, 2026) (same).

PARTIES

7. Petitioner C.A.M.R.is a resident of New York State. ICE arrested him on or about February 25, 2026, in Nassau County, New York. He is currently detained at the Metropolitan Detention Center ("MDC") in Brooklyn, New York, in this district. MDC is located at 80 29th Street, Brooklyn, New York 11232.

8. Respondent Markwayne Mullin is named in his official capacity as the Secretary of the United States Department of Homeland Security ("DHS"). In this capacity, he is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a), routinely transacts business in the Eastern District of New York, and is legally responsible for the pursuit of Petitioner's detention and removal. As such, he is the legal custodian of Petitioner.

Respondent Mullin's office is located at the United States Department of Homeland Security, Washington, DC 20528.

9. Respondent Kenneth Genalo is named in his official capacity as the Field Office Director of ICE's New York Field Office within DHS. In this capacity, he is responsible for the administration of immigration laws and the execution of detention and removal determinations. As such, he is the legal custodian of Petitioner. Respondent Genalo's office is located at 26 Federal Plaza, 9th Floor, New York, NY 10278.

10. Respondent Todd Blanche is named in his official capacity as the Acting Attorney General of the United States. In this capacity, he is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review ("EOIR") pursuant to 8 U.S.C. § 1103(g). He routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner's removal and bond proceedings and the standards used in those proceedings. As such, he is the legal custodian of Petitioner. Respondent Blanche's office is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

11. Respondent Raul Maldonado Jr. is named in his official capacity as the warden of MDC. In this capacity, he is responsible for the administration of MDC. As such, he is the immediate custodian of Petitioner. Respondent Maldonado's office is located at 80 29th Street, Brooklyn, NY 11232.

JURISDICTION AND VENUE

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

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

14. Venue is proper in this district under 28 U.S.C. §§ 2241 and 1391. *See Braden v. 30th Judicial Cir. Ct. of Ky.*, 410 U.S. 484, 493–500 (1973). C.A.M.R. is incarcerated at MDC, within this district; his immigration proceedings are venued in New York City; the ICE office that controls the location of his detention is based in New York City; and a substantial part of the events giving rise to the claims and relevant facts occurred in this district.

EXHAUSTION

15. Exhaustion in immigration detention cases is considered a prudential concern, rather than a statutory requirement. *See Artiga v. Genalo*, No. 25-CV-5208, 2025 WL 2829434, at *3 (E.D.N.Y. Oct. 5, 2025); *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 489 (E.D.N.Y. 2025); *see also Quintanilla v. Decker*, No. 21-CV-417, 2021 WL 707062, at *2 (S.D.N.Y. Feb. 22, 2021); *Joseph v. Decker*, No. 18-CV-2640, 2018 WL 6075067, at *5 (S.D.N.Y. Nov. 21, 2018).

16. Courts in this and neighboring districts "have excused exhaustion when considering whether '(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.'" *J.U.*, 805 F. Supp. 3d at 489 (quoting *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003)).

17. Here, "there are no administrative remedies that could provide Petitioner with the relief he seeks." *J.U.*, 805 F. Supp. 3d at 489. Like the petitioner in *J.U.*, C.A.M.R. "asserts that the original constitutional transgression occurred when ICE detained him . . . without first

making an individualized determination that he posed a flight risk or danger to the community, or any other type of process that would justify the detention." *Id.* Consequently, "the only cure to that unlawful detention is the vacatur of the detention—that is, the release of Petitioner from ICE custody." *Id.*

18. Because ICE failed to conduct any individualized review prior to C.A.M.R.'s detention, "a bond hearing for a post-deprivation review is wholly inadequate to remedy that [initial] unlawful detention." *Id.*; *see also Pastrana-Beltran*, 2026 WL 1398609, at *3 ("[G]iven the nature of the constitutional violation [Petitioner] 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 have been inadequate." (quoting *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 497 (S.D.N.Y. 2025))).

19. Further, C.A.M.R.'s claim "raises a substantial constitutional question that cannot be properly adjudicated administratively." *J.U.*, 805 F. Supp. 3d at 490; *see also Lopez Benitez*, 795 F. Supp. 3d at 497–98. Like the petitioner in *J.U.*, C.A.M.R. "contends that his continued detention . . . without DHS first making an individualized determination constitutes a violation of his due process rights." 805 F. Supp. 3d at 490. Because "neither an immigration judge nor the [Board of Immigration Appeals, or 'BIA'] is positioned to properly adjudicate such a claim," C.A.M.R. should be excused from exhausting administrative remedies before seeking relief from this court. *Id.*; *see also Artiga*, 2025 WL 2829434, at *4; *Lopez Benitez*, 795 F. Supp. 3d at 497–98.

20. Consequently, C.A.M.R. should be excused from pursuing administrative remedies, as such efforts would prove futile.

STATEMENT OF FACTS

21. C.A.M.R. is a twenty-one-year-old young man from Honduras. He fled to the United States, alone, when he was around seventeen years old.

22. When C.A.M.R. arrived in the United States around June 2022, DHS officers apprehended him. They determined that he was an unaccompanied noncitizen child within the meaning of the Homeland Security Act, 6 U.S.C. § 279(g)(2), because he was under eighteen, had no immigration status in the United States, and did not have a parent or legal guardian in the United States. Following C.A.M.R.'s apprehension, DHS officers referred him to the custody of the Office of Refugee Resettlement ("ORR"), pursuant to the Trafficking Victims Protection Reauthorization Act ("TVPRA"), 8 U.S.C. § 1232(b)(1). *See* 8 C.F.R. §§ 410.1200; 410.1205(f);[2] *R.A.R.R. v. Almodovar*, No. 25-CV-6597 (PKC), 2026 WL 323040, at *1 (E.D.N.Y. Feb. 6, 2026). *See* Ex. A, Unaccompanied Children Information.

23. ORR released C.A.M.R. into the custody of his older sister. Under ORR practice and regulations, this meant that his sister had been vetted and approved as a sponsor, and ORR had determined that C.A.M.R. was not a danger to himself or others.

24. In the United States, C.A.M.R. was relieved to have escaped the violence that had forced him to flee his community in Honduras. He first resided with his sister in Georgia. In 2024, they relocated to the New York City area together.

25. Since his arrival in the United States, C.A.M.R. has built deep roots here. He found work in remodeling and construction. He met his current partner, who is a lawful permanent resident.

[2] The ORR regulations, while not promulgated until 2024, codified existing policies and requirements as to the "placement, care, and services provided to unaccompanied children in Federal custody by reason of their immigration status and referred to ORR." Unaccompanied Children Program Foundational Rule, 89 Fed. Reg. 34384-01, 34385 (Apr. 30, 2024).

They attend church together and, prior to C.A.M.R.'s detention, had planned to move in together and marry.

26. C.A.M.R. also sought protection from removal to Honduras after his arrival in the United States. On February 24, 2025, he filed an application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") with U.S. Citizenship and Immigration Services ("USCIS"). The TVPRA grants USCIS initial jurisdiction over asylum applications filed by unaccompanied children." *See* 8 U.S.C. § 1158(b)(3)(C); *see also* Ex. B, Form I-589 Receipt. To date, USCIS has not adjudicated the application.

27. On or around February 24, 2026, local police in Nassau County, New York, stopped a taxi in which C.A.M.R., then twenty years old, was a passenger.

28. The following day, the police turned C.A.M.R. over to ICE. ICE initially detained C.A.M.R. at the Delaney Hall Detention Facility in Newark, New Jersey, but later transferred him to MDC in Brooklyn, where he remains today.

29. On February 25, 2026, ICE issued C.A.M.R. a Notice to Appear, charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), which pertains to presence in the United States without being admitted or paroled. *See* Ex. C, Notice to Appear.

30. Because C.A.M.R. entered the country without inspection, ICE purported to subject him to mandatory detention under 8 U.S.C. § 1225(b)(2). *See Matter of Yajure Hurtado*, 29 I. & N. Dec. at 228.

31. C.A.M.R. is a member of the certified class in *J.O.P. v. DHS*, 8:19-cv-01944 (D. Md.). Pursuant to the *J.O.P.* settlement agreement, the class encompasses people who: submitted their asylum applications to USCIS on or before February 24, 2025; were previously determined to be an unaccompanied children; were eighteen years or older at the time they

filed the application; and have not yet had their asylum applications adjudicated by USCIS.[3] The settlement agreement requires USCIS to accept jurisdiction over *J.O.P.* class members' asylum applications and hold them exempt from the one-year filing deadline.

32. C.A.M.R. sought termination of his removal proceedings to pursue asylum before USCIS under the *J.O.P.* settlement. The IJ declined to terminate. However, the IJ scheduled to adjudicate C.A.M.R.'s claim while acknowledging that USCIS has concurrent jurisdiction over the application.

33. C.A.M.R. is currently scheduled for an individual hearing before the IJ on July 27, 2026. At that hearing, he will present evidence in support of his application for asylum, withholding of removal, and CAT protection.

34. C.A.M.R. has been arrested two times in the United States. He does not have any criminal convictions.

35. On or around June 26, 2023, while living in Georgia, he was arrested and charged with O.C.G.A. §§ 16-13-30(j) (a marijuana-related offense) and 40-5-20 (driving without a valid license). Shortly after this arrest, C.A.M.R. relocated to the New York area with his older sister. He was unable to resolve the case prior to moving, and the case remains open at this time.

36. On or around February 24, 2026, immediately prior to turning C.A.M.R. over ICE, the Nassau County Police Department arrested him and charged him with N.Y. Penal Law § 220.03 (misdemeanor possession of a controlled substance).

37. C.A.M.R. has been unable to resolve his open criminal cases while detained, despite efforts

[3] *See J.O.P.* Notice of Final Class Action Settlement (Nov. 2024), https://nipnlg.org/sites/default/files/2024-11/JOP-class-notice-Eng.pdf.

to do so.

38. With respect to his arrest in Nassau County, New York, C.A.M.R.'s removal defense counsel, with the support of the Nassau County Legal Aid Society, has investigated options for resolving the matter while detained. MDC does not offer videoconferences, so he cannot appear virtually for his criminal court dates. C.A.M.R. instead requested that he be placed on a list of individuals to be produced in-person for his criminal court dates through writs of habeas ad prosequendum. He was previously set to appear in criminal court on March 20, 2026, but was not produced. He is waiting to see if ICE will produce him for his upcoming in-person court appearance in Nassau District Court on June 10, 2026.

39. As to his open case in Georgia, C.A.M.R.'s family contacted a private criminal defense attorney based in Georgia, who advised that his open case can only be resolved by coming to court in-person in Georgia.

40. C.A.M.R.'s ongoing detention thus impedes him from resolving his open criminal matters.

41. In the meantime, he has been detained for over three months and spent his twenty-first birthday in ICE detention.

42. If C.A.M.R. is released from detention, he will reside with his lawful permanent resident partner in Hicksville, New York.

LEGAL FRAMEWORK

I. Immigration Detention Framework and Bond Hearing Eligibility

43. "In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987).

44. For decades, the immigration system has implemented this balance through three mutually exclusive detention statutes.

45. First, at the border, "applicants for admission" who are "seeking admission" are placed into expedited removal proceedings and subject to detention without a bond hearing under 8 U.S.C. § 1225(b)(2).[4] *See Jennings v. Rodriguez*, 583 U.S. 281, 287 (2018) (describing § 1225 as relating to "borders and ports of entry"). These individuals may request release through humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

46. Second, individuals arrested inside the United States are generally placed into removal proceedings under 8 U.S.C. § 1229a, during which an Immigration Judge—and later potentially the BIA and a U.S. Court of Appeals—will decide whether the person should be deported. During these proceedings, a noncitizen may apply for various forms of relief from deportation, such as asylum, withholding of removal, cancellation of removal, and adjustment of status. This process can take months or even years.

47. Individuals arrested in the interior of the United States are detained pursuant to 8 U.S.C. § 1226. *See Jennings*, 583 U.S. at 288–89 (describing § 1226 detention as relating to people "inside the United States" and "present in the country"); *see also Barbosa da Cunha*, 175 F.4th at 77 (explaining that, where the mandatory detention statute at 8 U.S.C. § 1225(b)(2)(A) "says, '[noncitizen] seeking admission,' it . . . refers to a noncitizen who is seeking admission *right now*, not one who sought admission in the past but no longer is").

48. Most people arrested in the interior of the United States are eligible for release on bond under § 1226(a), and they are consequently entitled to a custody redetermination hearing (colloquially called a "bond hearing") before an immigration judge ("IJ") to decide whether

[4] Separately, a limited subset of individuals in and around the border may be placed into the expedited removal process, subjecting them to mandatory detention under 8 U.S.C. § 1225(b)(1). *See Make the Road N.Y. v. Noem*, No. 25-190, 2025 WL 2494908, at *23 (D.D.C. Aug. 29, 2025).

they should be detained or released pending the adjudication of their removal proceedings. *See* 8 C.F.R. §§ 1003.19(a), 236.1(d).

49. Last, the Immigration and Nationality Act ("INA") provides for detention of noncitizens who are subject to final orders of removal. *See* 8 U.S.C. § 1231(a)–(b). A removal order is not final until the BIA has dismissed any appeal of an IJ's decision. 8 C.F.R. § 1241.1(a).

II. Noncitizens' Procedural Due Process Rights

50. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). This constitutional protection applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas,* 533 U.S. at 693.

51. In the Second Circuit, courts apply the three-factor balancing test set forth in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what due process requires when the government seeks to deprive a noncitizen of their liberty. *See Black v. Decker*, 103 F.4th 133, 155–56 (2d Cir. 2024); *Velasco Lopez v. Decker*, 978 F.3d 842, 855–57 (2d Cir. 2020).

52. 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." *Mathews*, 424 U.S. at 335.

53. 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 v. Francis*, 795 F. Supp. 3d at 493 ("[Petitioner] invokes 'the

most significant liberty interest there is—the interest in being free from imprisonment.'" (quoting *Velasco Lopez*, 978 F.3d at 851)).

54. This liberty interest is heightened when ICE violates the INA and its own regulations in detaining a noncitizen. Under 8 U.S.C. § 1226(a) and its implementing regulations, any decision by ICE to detain a noncitizen requires an individualized determination as to risk of flight and danger to the community. *See, e.g.*, *Inestroza Carbajal*, 2026 WL 1309265, at *2 ("[R]egulations like those attendant to § 1226(a) exist 'to ensure that [t]he notion of fair play animating [the Fifth] [A]mendment is upheld, and to prevent an agency from promulgating a regulation affecting an individual liberty or interest, and then with impunity ignor[ing] or disregard[ing]' it.'" (quoting *Ndoye v. Joyce*, No. 25-CV-8856, 2026 WL 306387, at *9 (S.D.N.Y. Feb. 5, 2026))); *S.G.V. v. Genalo*, No. 26-CV-2893 (PKC), 2026 WL 1492770, at *1 (E.D.N.Y. May 28, 2026) ("Respondents do not point to anything in the record indicating that, at the time of arrest, ICE made an individualized custody determination to support a lawful arrest under Section 1226(a)."); *see also Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020*), appeal withdrawn sub nom. Velesaca v. Wolf*, No. 20 Civ. 2153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020) ("[Section] 1226(a) and its implementing regulations require [DHS] officials to make an individualized custody determination.").

55. 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). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

56. 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 or a flight risk, district courts have held that the government cannot demonstrate a significant interest in their detention. *See, e.g.*, *Minarcaja Concha v. Lyons*, 818 F. Supp. 3d 367, 390 (E.D.N.Y. 2026).

57. When a noncitizen does not receive an individualized determination as to danger and flight risk before ICE deprives him of his liberty, his due process rights are irrevocably violated, and no amount of post-detention process can remedy that violation. *See, e.g.*, *S.G.V.*, 2026 WL 1492770, at *2 ("[A] bond hearing could not retrospectively cure the due process violation, which derived from her unlawful arrest and detention without the statutorily required exercise of discretion." (quoting *Yao v. Almodovar*, 813 F. Supp. 3d 461, 476–77 (S.D.N.Y. 2025))); *Pastrana-Beltran*, 2026 WL 1398609, at *3; *Inestroza Carbajal*, 2026 WL 1309265, at *3; *Singh,* 2026 WL 1239057, at *4–*5; *Flores Garcia*, 2026 WL 1194715, at *1–*2; *Lin*, 2026 WL 1352428, at *1; *Zhao v. Genalo*, 2026 WL 1157960, at *4–*5; *Moctar*, 2026 WL 1170755, at *2–*3.

58. The impossibility of curing a pre-deprivation constitutional violation with post-detention process is especially manifest when a petitioner is forced to wait weeks or months to seek a bond hearing. *See Inestroza Carbajal*, 2026 WL 1309265, at *3 ("There is a fundamental due process problem with a custody determination weeks after arrest and detention. . . . Without any notice or opportunity to be heard, including an individualized assessment as to

flight or public safety risk at the outset, an after-the-fact custody determination at an arbitrary point in time, after the deprivation has already occurred, violates due process.").

59. As a result, courts in this district have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. *See, e.g.*, *S.G.V.*, 2026 WL 1492770, at *2; *Pastrana-Beltran*, 2026 WL 1398609, at *3; *Inestroza Carbajal*, 2026 WL 1309265, at *3; *Singh,* 2026 WL 1239057, at *4–*5; *Flores Garcia*, 2026 WL 1194715, at *1–*2; *Lin*, 2026 WL 1352428, at *1; *Zhao v. Genalo*, 2026 WL 1157960, at *4–*5; *Moctar*, 2026 WL 1170755, at *2–*3.

III. Timeline Pursuant to 28 U.S.C. § 2243

60. Courts considering petitions for writs of habeas corpus are directed to either issue a writ "forthwith," or to direct the respondent to show cause why the writ should not be granted within three days, or, with good cause, within twenty days. 28 U.S.C. § 2243.

61. Once the government has responded, the statute directs the Court to schedule a hearing on the petition "not more than five days after the return unless for good cause additional time is allowed." *Id.*

62. Because C.A.M.R.'s liberty remains heavily burdened during his continued detention, he asks the Court to adhere to the schedule set forth in § 2243 and order the Government to show cause within three days as to why the Petition should not be granted.

ARGUMENT

I. C.A.M.R.'s detention was unlawful from its inception.

63. On July 8, 2025, ICE adopted an unprecedented policy, deeming noncitizens like C.A.M.R., who entered the United States without inspection, subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and therefore ineligible for bond hearings. *See* Memorandum to All ICE Employees, *Interim Guidance Regarding Detention Authority for Applicants for Admission*

(July 8, 2025) (stating that "DHS, in coordination with the Department of Justice (DOJ), has revisited its legal position on detention and release authorities").[5] The new policy rejected the well-established understanding of the statutory detention framework described *supra* and reversed decades of practice.

64. On September 5, 2025, the BIA ratified DHS's new policy in a published decision, *Matter of Yajure Hurtado*. *See* 29 I. &. N. Dec. at 216. In that case, the BIA held that all noncitizens who entered the United States without admission or parole were "seeking admission" and thus subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and ineligible for bond. *See id.* at 228.

65. Because published BIA decisions are binding on IJs, from that point forward, all IJs were required to follow *Matter of Yajure Hurtado*, rendering noncitizens like C.A.M.R. ineligible for bond during proceedings that can extend several months and, in many cases, years. *See* 8 C.F.R. § 1003.1(g)(2) (describing precedential authority of published BIA decisions).

66. This unprecedented and unlawful policy, adopted by DHS and embraced by the BIA, prompted a deluge of habeas litigation across the country, brought by petitioners like C.A.M.R. who were being detained without any opportunity to seek release on bond based on a reading of the immigration statutes that lacked "a reasonable basis in the statutory text, structure, or history." *Barco Mercado v. Francis*, 811 F. Supp. 3d 487, 506 (S.D.N.Y. 2025).

67. District courts overwhelmingly and resoundingly rejected this new policy. *See id.* at 494 (describing hundreds of cases in which the "the overwhelming, lopsided majority have held that the law still means what it has always meant").

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

68. And now, the Second Circuit has "joined the overwhelming majority of federal judges across the Nation to . . . conclude that the government's novel interpretation of the immigration statutes defies their plain text." *Barbosa da Cunha*, 175 F.4th at 69. In *Barbosa da Cunha*, the Second Circuit held that 8 U.S.C. § 1225(b)(2)(A) "does not apply to . . . noncitizens who[] are present in the United States after entering the country without admission and who were not apprehended while entering the country or shortly thereafter." *Id.*

69. *Barbosa da Cunha* confirms that C.A.M.R.'s detention by ICE was unlawful from its inception. He entered the United States without inspection as a minor. ICE later arrested him on February 25, 2026, when DHS's unlawful policy was in full effect and IJs, bound by *Matter of Yajure Hurtado*, would not conduct bond hearings for anyone misclassified as subject to § 1225(b)(2)(A).

70. Consequently, ICE unlawfully detained and held C.A.M.R. under § 1225(b)(2)(A), a statute that does not, and never did, apply to him, rendering his detention unlawful from the moment it began.

II. Respondents violated C.A.M.R.'s procedural due process rights when it detained him without notice, opportunity to respond, or any individualized assessment as to danger or flight risk, such that he must be immediately released.

71. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V; *see also Reno*, 507 U.S. at 292; *Zadvydas*, 533 U.S. at 678; *Demore*, 538 U.S. at 510.

72. C.A.M.R. was entitled to due process of law in advance of any detention.

73. The Second Circuit applies the *Mathews* factors to determine what process is due in the context of immigration detention, balancing: (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*, 978 F.3d at 851 (citing *Mathews*, 424 U.S. at 335).

74. All three factors weigh in favor of concluding that C.A.M.R.'s detention without any pre-deprivation process violates his procedural due process rights.

75. First, as to the private interest, C.A.M.R. "invokes 'the most significant liberty interest there is—the interest in being free from imprisonment.'" *Lopez Benitez*, 795 F. Supp. 3d at 492 (quoting *Velasco Lopez*, 978 F.3d at 851).

76. Further, contravening the governing statute and regulations, ICE detained C.A.M.R. without notice, an opportunity to respond, or any meaningful evaluation as to his particular circumstances. Before ICE "may exercise [its] discretion to detain a person, '§ 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination.'" *Id.* (quoting *Velesaca*, 458 F. Supp. 3d at 241); *see also Velesaca*, 485 F. Supp. 3d at 235 (noting that § 1226(a) provides that the Attorney General "may" continue to detain an arrested noncitizen, and finding that "[t]he Supreme Court has interpreted similar 'may' language in other provisions of the INA to require the Attorney General to make 'some level of individualized determination'" (quoting *I.N.S. v. Nat'l Ctr. For Immigrants' Rts., Inc.*, 502 U.S. 183, 194 (1991))); *Inestroza Carbajal*, 2026 WL 1309265, at *3

77. Specifically, the regulations require that "a DHS officer make an individualized determination as to the appropriateness of detention based on two factors—whether the noncitizen is a 'danger to property or persons' and is 'likely to appear for any future proceeding.'" *Lopez Benitez*, 795 F. Supp. 3d at 493 (quoting 8 C.F.R. § 1236.1(c)(8)); *see*

also 8 C.F.R. § 236.1(c)(8) ("Any officer authorized to issue a warrant of arrest may, in the officer's discretion, release an alien . . . provided that the 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."). If DHS properly exercises its discretion to detain a noncitizen, the noncitizen may subsequently seek a custody redetermination hearing before an IJ. *See* 8 C.F.R. §§ 1003.19(d), (e).

78. When an immigration "regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, like the opportunity to be heard, and [ICE] fails to adhere to it, the challenged action is invalid . . . ." *Waldron v. I.N.S.*, 17 F.3d 511, 518 (2d Cir. 1993). Indeed, regulations like those attendant to § 1226(a) exist "to ensure that '[t]he notion of fair play animating [the Fifth] [A]mendment' is upheld, and to prevent an 'agency from promulgating a regulation affecting an individual liberty or interest,' and then 'with impunity ignor[ing] or disregard[ing]' it." *Ndoye v. Joyce*, No. 25-CV-8856, 2026 WL 306387, at *9 (S.D.N.Y. Feb. 5, 2026) (quoting *Montilla v. I.N.S.*, 926 F.2d 162, 164 (2d Cir. 1991)).

79. Yet, here, in detaining C.A.M.R., ICE adhered to a policy that directly contravened the agency's governing regulations. *See* Memorandum to All ICE Employees, *Interim Guidance Regarding Detention Authority for Applicants for Admission* (asserting that noncitizens present in the United States without having been admitted are subject to detention under 8 U.S.C. § 1225(b), ineligible for bond, and "may not be released for the duration of their removal proceedings"). The agency therefore did not exercise any discretion when it detained C.A.M.R. on February 25, 2026. Detaining someone simply because their detention is considered mandatory is "precisely the *opposite* of an exercise of discretion, which entails some sort of judgment." *Lopez Benitez*, 795 F. Supp. 3d at 494.

80. C.A.M.R.'s liberty interest is thus particularly heightened, as he was subjected to putatively mandatory detention without any process when ICE arrested him on February 25, 2026.

81. Moreover, C.A.M.R.'s detention has now exceeded three months. As the length of his detention has extended, his liberty interest has similarly increased. *See Velasco Lopez*, 978 F.3d at 852 ("The longer the duration of incarceration, the greater the deprivation."); *see also Veletanga v. Noemi*, No. 25-CV-9211 (NSR), 2025 WL 3751865, at *4 (S.D.N.Y. Dec. 26, 2025) (finding due process violation where petitioner had been detained without a bond hearing for over three months).

82. As to the second *Mathews* factor, the risk of erroneous deprivation is high, as "[t]he purpose of requiring an exercise of discretion prior to the decision to detain a noncitizen who is not subject to mandatory detention is to prevent an erroneous deprivation of liberty." *Lopez Benitez*, 795 F. Supp. 3d at 494.

83. To offer only a bond hearing now, after months of unlawful detention, fails to protect against this risk. "Taken to its logical conclusion, Respondents could detain someone who does not fall within any of the categories that Congress has identified as warranting immediate and mandatory detention or someone who is not subject to a final order of removal, and then weeks later provide them an opportunity to demonstrate they are entitled to release." *Inestroza Carbajal*, 2026 WL 1309265, at *3. Such "an after-the fact custody determination at an arbitrary point in time, after the deprivation has already occurred, violates due process." *Id.*; *see also Singh*, 2026 WL 1239057, at *3 ("[T]here is a high risk of erroneous deprivation through the procedures used to detain [the petitioner] because Respondents failed to provide any notice or any opportunity to be heard before a Department of Homeland Security officer or immigration judge before ICE detained him . . . .").

84. Finally, the government has a legitimate interest in "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. But subjecting C.A.M.R. to mandatory detention without any individualized determination of flight risk or dangerousness does not serve either of those ends. *See Inestroza Carbajal*, 2026 WL 1309265, at *4. When the agency fails to make any determination as to the "need to detain" an individual prior to their detention, "[a]llowing for a custody determination . . . weeks later does not advance any legitimate governmental purpose . . . ." *Id.*

85. In sum, all three *Mathews* factors weigh in favor of finding that C.A.M.R.'s detention without any pre-deprivation process violations his procedural due process rights.

86. Further, immediate release is appropriate because, by virtue of their unlawful policy in place at the time of C.A.M.R.'s arrest, Respondents did not conduct an individualized determination before his summary detention. *See id. at *5; see also, e.g.*, *Pastrana-Beltran*, 2026 WL 1398609, at *1–*3; *Singh*, 2026 WL 1239057, at *4–*5; *Flores Garcia*, 2026 WL 1194715, at *1–*2; *Lin*, 2026 WL 1352428, at *1; *Zhao*, 2026 WL 1157960, at *4–*5; *Moctar*, 2026 WL 1170755, at *2–*3.

III. In the alternative, C.A.M.R. must be afforded a bond hearing at which the government bears the burden of establishing dangerousness and flight risk by clear and convincing evidence.

1. Although immediate release is the only remedy that can adequately address the severe violation of due process rights in this case, should the Court choose not to grant such release, C.A.M.R. requests that the Court order that he be provided with an individualized bond hearing at which the Government "bear[s] the burden of demonstrating, by clear and

convincing evidence, that [he] is a danger to the community and a risk of flight," *Velasco Lopez v. Decker*, No. 19-CV-2912, 2019 WL 2655806, at *4 (S.D.N.Y. May 15, 2019).

87. Both the INA and due process require that the burden be allocated in this manner.

A. Congress did not intend for people subjected to immigration detention to bear the burden of proof in bond proceedings.

88. Although § 1226(a) is silent as to which party carries the burden of proof, the statutory context and legislative history of the provision demonstrates that DHS properly bears the burden of justifying a noncitizen's continued detention. If Congress intended that noncitizens carry the burden of proof in bond hearings pursuant to § 1226(a), it would have expressly said so—as it did in another subsection of § 1226. *See* 8 U.S.C. § 1226(c)(2) ("The Attorney General may release [a noncitizen]" subject to mandatory detention if release is (1) "necessary to provide protection to a witness" and (2) "the [noncitizen] satisfies the Attorney General that the alien will not pose a danger to the safety of other person or of property and is likely to appear for any scheduled proceedings").

89. "Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Nken v. Holder*, 556 U.S. 418, 430 (2009) (quoting *I.N.S. v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). This is "particularly true" in instances when Congress enacts statutes "as part of a unified overhaul" of the prior law. *Id.* at 430–31. Congress enacted all of § 1226 at the same time, in 1996. *See Demore*, 538 U.S. at 521 (describing "wholesale reform" of immigration laws as including enactment of § 1226). While § 1226(a) is silent with respect to the burden of proof, § 1226(c)(2) squarely places the burden on noncitizens to establish that their release is proper. Congress's failure to expressly require noncitizens to carry the burden of proof under § 1226(a) when it

overhauled the INA indicates that placing the burden on the noncitizen contravenes congressional intent.

90. Further, maxims of statutory construction dictate that "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). That canon applies here: in replacing 8 U.S.C. § 1252(a)(1) with § 1226(a), Congress made no meaningful changes to the language of the original statute and thus preserved the presumption against detention that existed at the time. *See Matter of Patel*, 15 I. & N. Dec. 666, 666 (BIA 1976) (articulating that an immigrant "generally is not and should not be detained or required to post bond except on a finding that he is a threat to the national security . . . or that he is a poor bail risk").

91. Former 8 U.S.C. § 1252(a)(1)[6] governed the detention of deportable immigrants prior to § 1226(a). Before the enactment of § 1226 and while § 1252(a)(1) was in effect, the BIA routinely held that noncitizens detained pursuant to § 1252(a) benefited from a presumption against detention during immigration proceedings. *See Matter of Patel*, 15 I. & N. Dec. at 666. The BIA maintained this presumption in several precedential decisions after *Matter of Patel*. *See, e.g.*, *Matter of Andrade*, 19 I. & N. Dec. 488, 489 (BIA 1987); *Matter of Spiliopoulos*, 16 I. & N. Dec. 561, 563 (BIA 1978).

[6] Former 8 U.S.C. § 1252(a)(1) read: "Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody or (2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole." Immigration and Nationality Act of 1952, Pub. L. No. 414, § 242(a), 66 Stat. 208, 209 (1952).

92. When Congress preserved the language of former § 1252(a)(1) in re-enacting it as § 1226(a), it presumably adopted the Board's "administrative [] interpretation" of the statute and thereby *Matter of Patel*'s presumption against detention during removal proceedings. *Lorillard*, 434 U.S. at 580. Notably, both statutes are silent with respect to the burden of proof. *Compare* former § 1252(a)(1) *with* § 1226(a).

93. As such, the agency's requirement that C.A.M.R. bear the burden of proof in a bond redetermination hearing pursuant to § 1226(a) is contrary to the statute.

B. Due process requires that C.A.M.R. receive a bond hearing where the government bears the burden of proof by clear and convincing evidence.

94. When the government seeks to use its weighty power to confine a person, due process requires "adequate procedural protections" to ensure that the government's asserted justification for physical confinement "outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas*, 533 U.S. at 690 (internal quotation marks omitted).

95. As repeatedly recognized by courts in this circuit, the government must bear the burden of proof by clear and convincing evidence for a bond hearing to be constitutionally adequate, regardless of the length of detention. In *Velasco Lopez,* the Second Circuit applied a *Mathews* analysis to conclude that due process requires placing the burden on the government in a §1226(a) bond redetermination hearing for a petitioner whose detention had become prolonged. *Id.* at 851 (*citing Mathews,* 424 U.S. at 319). Since then, courts in this circuit have consistently held that due process requires the government to bear the burden of proof. *See*, e.g., *Arana v. Decker*, No. 20-CV-4104, 2020 WL 7342833, at *9 (S.D.N.Y. Dec. 14, 2020) (granting the writ and ordering a burden-shifted bond hearing to a petitioner detained for nine months after individualized analysis guided by the framework of *Velasco*

Lopez); *Guerrero v. Decker*, 19-CV-11644, 2020 WL 1244124, at *5 (S.D.N.Y. Mar. 16, 2020) ("'[I]n accordance with every court to have decided this issue,' [] the Court concludes that due process requires the Government to bear the burden of proving that detention is justified at a bond hearing under § 1226(a)." (quoting *Linares Martinez v. Decker*, No. 18-CV-6527, 2018 WL 5023946, at *5 (Oct. 17, 2018))).

96. District courts that have considered the procedural protections required at the initial bond hearing have continued to require the burden to be on the government at all § 1226(a) custody hearings, regardless of the length of detention. *Reyes v. King*, No. 19 CIV. 8674, 2021 WL 3727614, at *7 n.7 (S.D.N.Y. Aug. 20, 2021) (agreeing with the "'overwhelming majority of courts' that have found that the Due Process Clause of the Fifth Amendment requires" the government to bear the burden of demonstrating by clear and convincing evidence that detention is justified and refusing to alter the analysis in light of *Velasco Lopez*); *Banegas v. Decker*, No. 21-CV-2359, 2021 WL 1852000, at *3 (S.D.N.Y. May 7, 2021) ("[N]either the Circuit's decision in *Velasco Lopez* nor any other binding appellate authority overrules the 'overwhelming consensus' of courts in this District that the Due Process Clause of the Fifth Amendment requires the Government to bear the burden . . . even absent 'prolonged detention.'"); *Jimenez v. Decker*, No. 21-CV-880, 2021 WL 826752, at *8, 11 (S.D.N.Y. Mar. 3, 2021) (rejecting the government's argument that *Velasco Lopez* only authorized shifting the burden with prolonged detention and applying the *Mathews* factors); *Quintanilla*, 2021 WL 707062, at *3.

97. This consensus approach aligns with the Second Circuit's analysis in *Velasco Lopez*, which affirmed that longstanding Supreme Court precedents in other civil confinement contexts apply with equal force in the immigration context. 978 F.3d at 856; *see Hernandez-Lara v.*

Lyons, 10 F.4th 19, 37–38 (2d Cir. 2021). Those precedents underscore that civil detention must be carefully limited to avoid due process concerns. *See, e.g.*, *Kansas v. Hendricks*, 521 U.S. 346, 368 (1997); *Cooper v. Oklahoma*, 517 U.S. 348, 363 (1996); *Foucha*, 504 U.S. 71, 80 (1992); *Addington v. Texas*, 441 U.S. 418, 425 (1979); *see also Salerno*, 481 U.S. at 755 ("In our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.").

98. They further instruct that, given the gravity of the liberty deprivation when the government preventively detains individuals, due process requires the jailers to establish the necessity of that detention—not the person detained. *See, e.g.*, *Salerno*, 481 U.S. at 751 (affirming legality of pretrial detention where burden of proof was on the government); *see also Foucha*, 504 U.S. at 81–82, 86 (holding unconstitutional a state civil insanity detention "statute that place[d] the burden on the detainee to prove that he is not dangerous"). That interest in liberty is strong even at the outset of detention: "[I]t is clear that commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Velasco Lopez*, 978 F.3d at 851 (quoting *Jones v. United States*, 463 U.S. 354, 361 (1983)); *United States v. Comstock*, 560 U.S. 126, 130–31 (2010) (holding that the clear and convincing standard applies under a federal statute which permits a continued confinement of a "mentally ill, sexually dangerous" prisoner beyond a date that the prisoner would otherwise be released, from the outset of that continued detention period). Even when the Supreme Court upheld the constitutionality of categorical detention for certain noncitizens with criminal convictions, it relied on those individuals having received "the *full procedural protections* our criminal justice system offers," *Demore*, 538 U.S. at 513; on Congress considering specific studies regarding its legislative choice, *id.* at 518–21; and on

the relatively short duration of detention it anticipated, *id.* at 529. None of those circumstances are applicable to the discretionary, potentially indefinite detention at issue here. *See Velasco Lopez*, 978 F.3d at 850 n.7, 852; *Hernandez-Lara*, 10 F.4th at 35–36.

99. And those precedents finally hold that, in contrast to the preponderance-of-the-evidence standard in most civil proceedings, the government must be held to a clear and convincing standard of proof when an individual's liberty is at stake. *Velasco Lopez*, 978 F.3d at 856 n.15 ("When someone stands to lose an interest more substantial than money, we protect that interest by holding the Government to a higher standard of proof." (quoting *German Santos v. Warden Pike Cty. Corr. Facility*, 965 F.3d 203, 214 (3d Cir. 2020))); *see Cooper*, 517 U.S. at 363; *Foucha,* 504 U.S. at 81. In cases in which the individual's interest is of "such weight and gravity," it is improper to ask an individual to "share equally with society the risk of error." *Addington*, 441 U.S. at 427. Immigration detention implicates "the most significant liberty interest there is—the interest in being free from imprisonment." *Velasco Lopez*, 978 F.3d at 851.

C. Petitioner's bond hearing must have further procedural protections to satisfy due process.

100. The Due Process Clause requires that detention "bear a reasonable relation to its purpose." *Zadvydas*, 533 U.S. at 690; *see also Velasco Lopez*, 978 F.3d at 854–55 (holding that the only legitimate purposes for immigration detention are to protect community safety and to ensure that noncitizens attend future hearings); *Hernandez-Lara*, 10 F.4th at 32 n.5 (same). To satisfy this requirement, a bond hearing must include additional procedural protections, specifically consideration of an individual's ability to pay and alternative conditions of release.

101. A robust consensus of district courts in this circuit agree that due process requires considering on of an individual's ability to pay and alternative conditions of release when setting a bond. *See O.F.C. v. Decker*, No. 22 CIV. 2255, 2022 WL 4448728, at *10 (S.D.N.Y. Sept. 12, 2022) ("Courts in this District overwhelmingly agree that IJs must consider these two factors—alternatives to imprisonment and ability to pay—when determining bond for a detained immigrant.) (collecting cases); *Roman v. Decker*, No. 20-CV-6752, 2020 WL 5743522, at *4 (S.D.N.Y. Sept. 25, 2020) ("Requiring that the adjudicator consider alternative conditions of release and the detainee's ability to pay in setting bond [] ensures that detention is not imposed arbitrarily."); *see also Rodriguez Sanchez v. Decker*, 431 F. Supp. 3d 310, 317 (S.D.N.Y. 2019) (collecting cases); *Arana*, 2020 WL 7342833, at *8; *Hernandez-Aviles v. Decker*, No. 20 CIV. 7636, 2020 WL 5836519, at *2 (S.D.N.Y. Oct. 1, 2020); *Fernandez Aguirre v. Barr*, 19-CV-7048, 2019 WL 4511933, at *4 (S.D.N.Y. Sept. 18, 2019); *Hernandez v. Decker*, No. 18-CV-5026, 2018 WL 3579108, at *12 (S.D.N.Y July 25, 2018).

102. If the noncitizen's ability to pay is not considered after they have been deemed eligible for bond, they will continue to be detained not for a legitimate purpose but solely due to their indigency, accomplishing "little more than punishing a person for his poverty." *Hernandez v. Sessions*, 872 F.3d 976, 992 (9th Cir. 2017) (quoting *Bearden v. Georgia*, 461 U.S. 660, 671 (1983)).

103. Similarly, if the government is able to protect its regulatory interests through less restrictive means, detention is no longer reasonably related to a legitimate purpose. *See Salerno*, 481 U.S. at 755 (approving a pretrial detention act that required the Government to show that no conditions of release could satisfy its interests); *Bell v. Wolfish*, 441 U.S. 520, 538

(1979); *Hernandez*, 872 F.3d at 991. Where an alternative condition of release would reasonably safeguard the government's interest, the government has no legitimate interest in detaining that person. *See Hechavarria v. Whitaker*, 358 F. Supp. 3d 227, 231 (W.D.N.Y. 2019) ("[T]he determination of whether detention was 'necessary to serve a compelling regulatory purpose' necessarily required the decisionmaker to consider whether 'a less restrictive alternative to detention' would suffice."). Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

104. Accordingly, due process requires that the government, in order to meet their burden of justifying detention, show why no alternative short of detention would suffice to protect their interests, and the immigration judge in turn must consider those alternatives. *See Hernandez*, 872 F.3d at 991 (noting that such programs were empirically highly effective at ensuring court appearances).

2. Specifically, "the heavy weight of recent case law" in this district requires consideration of alternatives to detention as to both danger and flight risk. *D.C. v. Noem*, --- F. Supp. 3d ---, No. 26 CIV. 1833 (PAE), 2026 WL 787895, at *12 (S.D.N.Y. Mar. 20, 2026); *see also, e.g.*, *Beltran Marroquin v. Genalo*, No. 24 Civ. 6376, 2025 WL 3241161, at *3–*4 (S.D.N.Y. Nov. 20, 2025) (finding "due process requires an immigration judge to consider alternatives to detention when evaluating whether Petitioner poses a danger to the community"); *J.I.T. v. Francis*, No. 25-CV-06749 (MMG), 2025 WL 3295851, at *5 (S.D.N.Y. Nov. 26, 2025); *M.P.L.*, 2025 WL 2938993, at *6 (same); *G.F.F. v. Francis*, No. 25-CV-7368 (JGK), 2025

WL 3141735, at *6 (S.D.N.Y. Nov. 10, 2025); *J.C.G. v. Genalo*, No. 1:24-CV-08755 (JLR), 2025 WL 88831, at *10 (S.D.N.Y. Jan. 14, 2025).

105. In light of the strong interest that C.A.M.R. has in his liberty, the Constitution requires adequate procedural protections—namely, the consideration of his ability to pay and alternative conditions of release as to both flight risk and danger—before any decision is made to continue depriving him of his freedom.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1226(a) and Implementing Regulations

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

107. At the time ICE detained C.A.M.R., the agency purported to detain him under 8 U.S.C. § 1225(b)(2), which mandates detention without the opportunity to seek release on bond.

108. However, Petitioner was, at the time of his arrest and detention by Respondents, not seeking admission to the United States. He was already residing in the United States. Consequently, 8 U.S.C. § 1226(a) governed his detention.

109. Because ICE applied an unlawful, blanket no-bond policy to C.A.M.R. in arresting him and subjecting him to mandatory detention, the agency failed to exercise any discretion in determining whether to detain him.

110. Consequently, C.A.M.R.'s detention is unlawful under the INA and its implementing regulations.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION
(Procedural Due Process: Failure to Conduct an Individualized Pre-Detention Assessment)

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

112. ICE adhered to an unlawful policy that violated its own regulations when the agency detained C.A.M.R. without any individualized consideration as to danger or flight risk.

113. Respondents have therefore violated C.A.M.R.'s procedural due process rights, and no amount of post-deprivation process can cure that deprivation.

COUNT THREE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION
(Procedural Due Process: Prolonged Detention)

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

115. ICE has now detained C.A.M.R. for over three months. His arrest and detention were unlawful from their inception, as he was held under a statute that did not apply to him for months and had no opportunity to seek release on bond.

116. This prolonged detention violates C.A.M.R.'s procedural due process rights.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Declare that Petitioner's detention violates the Immigration and Nationality Act;

b. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;

c. Enjoin Petitioner's transfer outside of this district;

d. Order a stay of removal to retain the Court's jurisdiction while these proceedings are pending;

e. Grant a writ of habeas corpus ordering Respondents to immediately release C.A.M.R. from its custody and notify C.A.M.R.'s counsel of where and when he will be released, and further ordering that C.A.M.R. shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing, where the government will have the burden of showing that his detention is authorized under 8 U.S.C. § 1226(a);

f. In the alternative, grant a writ of habeas corpus ordering Respondents to provide C.A.M.R. with a bond hearing within fourteen days of its order at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence, and at which the immigration judge must consider alternatives to detention as to both danger and flight risk, as well as ability to pay in setting any bond, and further enjoining Respondents from invoking the automatic stay provision at 8 C.F.R. § 1003.19(i)(2) if C.A.M.R. is granted bond;

g. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

h. Grant such further relief as this Court deems just and proper.

Dated: June 4, 2026
New York, NY

Respectfully submitted,

/s/ Jessica Coffrin-St. Julien

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Counsel for Petitioner

TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am Petitioner's attorney. I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: June 4, 2026

/s/ Noor Sheikh
Noor Sheikh, Esq.