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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FERNANDO JEFFERSON MARTINEZ ADAUTO,

Petitioner,

v.

Raul MALDONADO JR., Warden, Metropolitan Detention Center; Judith ALMODOVAR, New York Field Office Director for U.S. Immigration and Customs Enforcement; Todd BLANCHE, Attorney General of the United States; Markwayne MULLIN, Secretary of Homeland Security; and Todd M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Civil Action No. _____

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Petitioner brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States. Petitioner alleges in support of his petition:

PRELIMINARY STATEMENT

1. Petitioner Fernando Jefferson Martinez Adauto is in the physical custody of Respondents at the Metropolitan Detention Center. His detention is unlawful because he was detained by Immigration and Customs Enforcement ("ICE") without an individualized determination regarding danger to the community or risk of flight.

2. As the Second Circuit recently held, the discretionary statute 8 U.S.C. § 1226(a) applies to individuals, like Petitioner "who are present in the United States, but charged as inadmissible for entering the country without inspection and admission." *Cunha v. Freden*, No. 25-3141-PR, 2026 WL 1146044, at *2 (2d Cir. Apr. 28, 2026). Petitioner was released on conditional parole under 8 U.S.C. § 1226(a), and he had the right to an individualized determination of danger or flight risk prior to being detained.

3. Petitioner's confinement is unlawful and he brings this petition seeking his immediate release, subject to the conditions that were contained in his Order of Release on Recognizance.

4. Petitioner also asks this Court to enjoin his transfer outside this District. *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)); *Perez y Perez v. Noem*, 25 Civ. 4828 (DEH), 2025 WL 1908284, at *2 (S.D.N.Y. June 13, 2025).

5. Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited basis set forth in the statute, during which the Court should (1) find that Petitioner's detention violates the United States Constitution and federal law; and (2) order his release.

PARTIES

6. Petitioner Fernando Jefferson Martinez Adauto (hereinafter, "Petitioner") is alleged to be a citizen of Venezuela who has been in immigration detention since May 4, 2026.

7. Respondent Raul MALDONADO JR. is named in his official capacity as the Warden of the Metropolitan Detention Center.

8. Respondent Judith ALMODOVAR is named in her official capacity as the Field Office Director for ICE's New York Field Office. She is responsible for the administration of immigration laws and the execution of detention warrants and removal orders.

9. Respondent TODD BLANCHE is named in his official capacity as the Acting Attorney General of the United States. He is responsible for the policies and operations of the Department of Justice ("DOJ").

10. Respondent MARKWAYNE MULLIN is named in his official capacity as the Secretary of the Department of Homeland Security ("DHS"). He directs each of the component agencies within DHS, including Immigration and Customs Enforcement ("ICE").

11. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of the immigration laws.

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. The 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. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 493-500 (1973), venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is incarcerated at the Metropolitan Detention Center, within this District; 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.

STATEMENT OF FACTS

15. Petitioner has resided in the United States since December 5, 2023. He entered without inspection near Paso del Norte, TX. DHS placed Petitioner in removal proceedings before the Immigration Court pursuant to 8 U.S.C. § 1229a, charging Petitioner with, *inter alia*, being subject to removal pursuant to Section 212(a)(6)(A)(i), in that he is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. See Exhibit 1.

16. ICE released Petitioner on his own recognizance pursuant to the authority contained in Section 236 of the Immigration and Nationality Act, after making the required determination that he was neither a flight risk nor a danger to the community. See Exhibit 2.

17. On September 24, 2024, Petitioner filed an application of asylum with the Immigration Court. See Exhibit 3. On September 26, 2025, Petitioner's application for employment authorization was approved. See Exhibit 4. He has been gainfully employed in construction since that time.

18. In the United States, he resides with his domestic partner at [redacted].

19. On May 4, 2026, Petitioner was in a vehicle that was stopped by Nassau County Police. Petitioner and the other vehicle occupants were arrested and charged with theft of two forklift forks. The arrest charge was Grand Larceny in the Fourth Degree.

20. Petitioner and the other vehicle occupants told the police officers in Spanish that they had found the forks next to a garbage can and believed them to be abandoned. None of the police officers spoke Spanish. The police officers then contacted ICE officers, who arrived at the police station. After Petitioner was released from police custody on a Desk Appearance Ticket, the ICE officers took Petitioner and the other vehicle occupants into custody, and processed them for detention. Petitioner and the other vehicle occupants told the ICE officers that they had found the forks next to a garbage can and believed them to be abandoned. The ICE officers did not communicate this information to the ICE official who made the decision to detain. Petitioner is now detained at the Metropolitan Detention Center.

21. Petitioner has been in ICE detention since May 4, 2026. Without relief from this court, he faces the prospect of months, or even years, in immigration custody, separated from his family and community.

LEGAL BACKGROUND

22. 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).

23. Under the Section 1226 framework, 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 Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("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, 493 (S.D.N.Y. 2025). If, after an 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.

Noncitizens' Procedural Due Process Rights

24. 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).

25. 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*, 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)).

26. Further, 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." *Mata Velasquez v. Kurzdorfer*, 794 F. Supp. 3d 128, 149 (W.D.N.Y. 2025).

27. 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* 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).

28. 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. *See Velesaca v. Decker*, No. 20-CV-1803, 458 F. Supp. 3d 224, 235 (S.D.N.Y. 2020); *Lopez Benitez*,

795 F. Supp. at 495; *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025).

29. 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*, 795 F. Supp. at 492 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (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).

30. 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 a manner as will allow [noncitizens] to actually seek . . . relief[.]" Id.

31. 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. *See Lopez Benitez*, 795 F. Supp. at 496; *Valdez v. Joyce*, 803 F. Supp. 3d 213, 218–19 (S.D.N.Y. 2025).

32. 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. Further, 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*, 795 F. Supp. at 497 ("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."); *see also Chipantiza-Sisalema*, 2025 WL 1927931, at *3 (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); *Kelly*, 2025 WL 2381591, at *3 (same). This is particularly clear where, as is the case with Petitioner here, the government has already made a determination that he is not a flight risk or a danger, and Petitioner was not given an opportunity to show that this was still the case. *Kelly*, 2025 WL 2381591, at *3.

33. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding flight risk or a danger before Petitioner was detained.

Immediate Release is the Proper Remedy for Respondents' Lawless Detention of Petitioner

34. 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).

35. No procedural alternative to release can serve as an effective remedy. Petitioner's detention was unlawful from the moment he was detained and then taken into custody.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

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

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

37. Petitioner is detained under § 1226(a), as reflected by DHS's own documents, binding law, and longstanding historical practice.

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

39. ICE did not conduct an individualized determination of the propriety of Petitioner's detention before it detained him.

SECOND CAUSE OF ACTION:

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

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

41. 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.

42. 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.

43. Here, all three factors weigh in favor of finding that Respondents have violated Petitioner's right to procedural due process by affording Petitioner no process at the time of his detention, by providing Petitioner no way to meaningfully contest his unlawful detention and by failing to provide an individualized determination regarding flight risk and danger.

THIRD CAUSE OF ACTION:

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

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

45. 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[.]".

46. 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).

47. 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.

48. 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.

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

PRAYER FOR RELIEF

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;

3. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty, including electronic monitoring, and enjoining any re-detention under the immigration laws of the United States, pending a final determination in his removal proceedings;

4. 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

5. Grant such further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: June 23, 2026
New York, NY

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