UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

HECTOR NEFTALI SUHUL-SAPALU,
Petitioner,

A No. [redacted],

v.

KEN GENALO, Acting Field Office Director,
New York City Field Office, Enforcement and Removal
Operations, U.S. Immigration and Customs Enforcement;
DAVID J. VENTURELLA, Senior Official Performing
the Duties of the Director of U.S. Immigration
and Customs Enforcement;
MARKWAYNE MULLIN, Secretary, Department of Homeland Security;
TODD BLANCHE, Attorney General of the United States; and
RAUL MALDONADO, JR., Warden, Metropolitan Detention Center (MDC)
Brooklyn, New York,
Respondents.

PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241
PRELIMINARY STATEMENT

1. Petitioner Hector Neftali Suhul-Sapalu, by counsel, petitions for a writ of habeas corpus under 28 U.S.C. § 2241 and moves by Emergency Order to Show Cause and Temporary Restraining Order. This application is filed on an emergency basis to prevent unlawful transfer or removal, preserve this Court's habeas jurisdiction, require Respondents to certify the true statutory and factual cause of detention, and secure Petitioner's release from unlawful custody.

2. As of today, July 2, 2026, Petitioner is detained at the Metropolitan Detention Center in Brooklyn, New York.

3. Petitioner has not had adequate access to counsel since his arrest. Counsel has not yet had a meaningful opportunity to confer fully with Petitioner, obtain the administrative record, review all arrest and custody paperwork, examine any warrant or Notice to Appear, determine whether DHS claims custody under 8 U.S.C. § 1225, § 1226(a), § 1231, or another provision, or review the full Immigration Court record.

4. The facts alleged herein are based on the limited information presently available to counsel, including information provided by Petitioner's family, available intake records, the ICE Online Detainee Locator, EOIR automated case information, USCIS receipts and notices, and counsel's preliminary investigation.

Respondents Alone Possess The Record Needed To Justify Custody

5. Because this Petition is being filed on an emergency basis while Petitioner remains in federal immigration custody, and because the material arrest, custody, warrant, charging, detention, removal, and immigration records are exclusively in Respondents' possession, custody, or control, certain allegations are necessarily pleaded on information and belief.

6. Counsel has conducted an inquiry reasonable under the emergency circumstances, and the factual allegations so pleaded either have evidentiary support based on the information presently available to counsel or are likely to have evidentiary support after Respondents produce the complete necessary record.

7. Petitioner reserves the right to supplement, amend, or conform this Petition once Respondents certify the true cause of detention and produce the records required for meaningful habeas review.

8. No allegation pleaded on information and belief, in the alternative, or under emergency conditions should be construed as a concession that Respondents had lawful authority to arrest, detain, transfer, or remove Petitioner.

Petitioner Pleads In The Alternative Until Respondents Disclose The True Basis For Detention

9. Petitioner does not presently know under which statutory provision DHS claims authority to detain him.

10. DHS has not produced the full custody documents, administrative-warrant records, arrest records, A-file, custody determination, proof of service, appeal waiver, appeal history, or contemporaneous paperwork sufficient to determine whether DHS purports to proceed under 8 U.S.C. § 1225, § 1226(a), § 1231, or another provision.

11. Petitioner therefore pleads in the alternative until Respondents produce the record required for meaningful habeas review.

12. Alternative pleading is expressly permitted and is especially appropriate where, as here, the Government has not disclosed the legal theory it claims justifies custody. See Fed. R. Civ. P. 8(d)(2)–(3); *Henry v. Daytop Village, Inc.*, 42 F.3d 89, 95–96 (2d Cir. 1994); *Riverwoods Chappaqua Corp. v. Marine Midland Bank, N.A.*, 30 F.3d 339, 343 (2d Cir. 1994).

THE FACTS

PETITIONER IS A LONG-PRESENT NEW YORK RESIDENT, FATHER, AND SUPPORTING PARTNER

13. Petitioner Hector Neftali Suhul-Sapalu is a native and citizen of Guatemala.

14. Petitioner's Alien Registration Number is [redacted].

15. Petitioner resides, or until his arrest resided, at [redacted].

16. Petitioner has lived in the United States for about ten years.

17. According to the information presently available, Petitioner entered the United States in approximately 2016, when he was approximately sixteen years old.

18. Upon information and belief, Petitioner was encountered by immigration authorities near the border after entering the United States and was thereafter released into the United States while his immigration proceedings and applications remained pending.

19. Petitioner was not arrested in this case at the border.

20. Petitioner was not arrested in this case at a port of entry.

21. Petitioner was not apprehended in this case while attempting to enter the United States.

22. Petitioner has been residing openly in New York.

23. Petitioner is in a long-term relationship with Glenda Cardona Aguilon.

24. Ms. Cardona Aguilon is a lawful permanent resident of the United States.

25. Petitioner and Ms. Cardona Aguilon have one United States citizen child together.

26. Their child is approximately [redacted]

27. Petitioner's [redacted]child depends upon Petitioner and the child's mother for daily care, emotional support, and financial support.

28. Petitioner worked in construction for approximately one year before his arrest.

29. Petitioner's work provided support for his family and infant child.

30. Petitioner has a fixed address in Port Chester, New York and substantial family ties in the community.

31. Counsel has not been provided any evidence that Petitioner attempted to flee, evade immigration authorities, or abscond from immigration proceedings.

IMMIGRATION HISTORY

PETITIONER HAS PENDING IMMIGRATION PROCEEDINGS AND A SCHEDULED MASTER CALENDAR HEARING

32. The limited immigration documents presently available show that Petitioner has long had active immigration matters before federal immigration authorities.

33. USCIS records available to counsel reflect that Petitioner filed Form I-589, Application for Asylum and for Withholding of Removal.

34. A USCIS receipt notice dated August 28, 2017 reflects that Petitioner's completed Form I-589 was received and pending as of August 25, 2017.

35. The same notice advised Petitioner that he could remain in the United States until his asylum application was decided, subject to the conditions stated in the notice.

36. USCIS records also reflect that Petitioner was scheduled for biometrics in connection with the Form I-589 application in September 2017.

37. **USCIS later approved Petitioner's Form I-765 employment authorization application in the C08 category, with employment authorization valid from March 5, 2018 through March 4, 2020.**

38. According to the information presently available from Petitioner's family, prior counsel Daniel Spensieri also pursued immigration relief for Petitioner related to Special Immigrant Juvenile status.

39. Counsel has not yet received the complete A-file or the complete records from Petitioner's prior counsel and therefore pleads the SIJS-related facts upon information and belief.

40. The EOIR Automated Case Information system presently reflects that Petitioner's removal proceedings are pending.

41. **EOIR presently lists a Master Calendar hearing for Petitioner on July 14, 2026, at 9:30 a.m., before Immigration Judge Dara Reid.**

42. EOIR lists that hearing as internet-based.

43. The EOIR automated information therefore does not show that Petitioner is under an administratively final order of removal.

45. Respondents have not produced any document establishing that Petitioner is detained under 8 U.S.C. § 1231.

50. Respondents must therefore identify the actual statutory basis they claim authorizes custody.

UPON INFORMATION AND BELIEF, ICE ARRESTED PETITIONER OUTSIDE HIS HOME WHILE HE WAS LEAVING FOR WORK

51. On or about June 22, 2026, Petitioner left his residence in Port Chester, New York early in the morning to go to work.

52. Petitioner was not hiding from immigration authorities.

53. Petitioner was not fleeing from immigration authorities.

54. Petitioner was leaving his known residence to report to work.

55. Upon information and belief, ICE officers approached Petitioner outside or near his residence and took him into immigration custody.

56. Upon information and belief, ICE did not provide Petitioner advance notice that it intended to arrest him.

57. Upon information and belief, ICE did not give Petitioner an opportunity to surrender voluntarily.

58. Upon information and belief, ICE did not show Petitioner a judicial warrant before arresting him.

59. Upon information and belief, ICE did not show Petitioner an administrative warrant before arresting him.

60. Upon information and belief, ICE did not provide Petitioner with a meaningful explanation of the asserted statutory or factual basis for taking him into immigration custody at the time of arrest.

61. Upon information and belief, ICE did not make or serve a contemporaneous individualized custody determination before or at the time Petitioner was taken into custody.

62. Upon information and belief, ICE did not make an individualized finding, before or at the time of arrest, that Petitioner was likely to escape before a warrant could be obtained.

63. Upon information and belief, ICE did not make an individualized determination, before or at the time of detention, that Petitioner posed a danger or flight risk requiring detention rather than release, supervision, or another alternative to detention.

64. Petitioner was arrested in the interior of the United States approximately ten years after his entry.

65. Petitioner had a known residence in Port Chester, New York.

66. Petitioner had a lawful permanent resident partner and a United States citizen infant child in the community.

67. Petitioner had employment in construction and was leaving for work when he was detained.

68. These facts were directly relevant to any lawful custody determination, including danger, flight risk, family ties, residence, compliance history, employment, and alternatives to detention.

69. Upon information and belief, ICE detained Petitioner without making a real individualized custody determination under the correct statute before or contemporaneously with the taking of his liberty.

70. Respondents alone possess the complete arrest, warrant, charging, custody, detention, and immigration records necessary to determine what authority they claim justified Petitioner's arrest and detention.

71. Respondents should be required to certify the true cause of detention and produce the complete arrest and custody record.

RESPONDENTS MUST IDENTIFY WHETHER THEY CLAIM AUTHORITY UNDER § 1225, § 1226, OR § 1231

79. Because Petitioner was arrested in the interior years after entry, and because he was not apprehended at or near the border in connection with this arrest, Respondents must identify the correct statutory detention authority.

80. If DHS contends that Petitioner is detained under 8 U.S.C. § 1225, Respondents must explain how that provision lawfully applies to a long-present interior resident arrested in New York after leaving his home for work approximately ten years after entry.

81. If DHS contends that Petitioner is detained under 8 U.S.C. § 1226(a), Respondents must produce the individualized custody determination, the statutory basis for custody, and the records showing that DHS considered danger, flight risk, family ties, residence, employment, pending proceedings, prior release, United States citizen child, community ties, and alternatives to detention before taking and keeping Petitioner in custody.

82. If DHS contends that Petitioner is detained under 8 U.S.C. § 1231, Respondents must produce the final removal order, proof of service, appeal waiver or appeal history, and all records showing that § 1231 rather than § 1226(a) presently governs custody.

83. Respondents must also explain how any later removal-related theory could retroactively cure an arrest and initial detention that were unlawful when made.

DETENTION AND CONTINUING HARM

DETENTION IS CAUSING ONGOING FAMILY, LEGAL, AND DUE PROCESS HARM

84. Petitioner has remained detained since on or about June 22, 2026.

85. Petitioner is currently detained at the Metropolitan Detention Center in Brooklyn, New York.

86. The Metropolitan Detention Center is located within the Eastern District of New York.

87. The ICE Online Detainee Locator identifies Petitioner as being in ICE custody in New York at the Brooklyn MDC.

88. Petitioner's detention is a severe deprivation of liberty.

89. Petitioner remains separated from his lawful permanent resident partner and their [redacted] United States citizen child as a result of his continued detention.

90. Petitioner's detention has disrupted the stability of his family and has separated [redacted] United States citizen child from his or her father.

91. Petitioner's detention has made communication with counsel and family substantially more difficult.

92. Petitioner seeks review of his continued detention and an opportunity to pursue his pending immigration proceedings and available relief while not unnecessarily detained.

93. Petitioner is not seeking to evade immigration proceedings.

94. Petitioner seeks only a lawful process, access to counsel, and release from unlawful detention.

95. The available facts show that Petitioner had a known address, had substantial family ties, had employment, had a United States citizen infant child, and had pending proceedings with a scheduled Master Calendar hearing.

96. Those facts make the absence of a contemporaneous individualized custody determination especially significant.

97. The Government has not produced a lawful and timely individualized custody determination under the correct statute.

98. The Government has not produced the documents necessary to test the legality of Petitioner's arrest and detention.

99. Respondents should be required to produce all arrest, warrant, custody, charging, detention, transfer, removal, and immigration-court records necessary for meaningful habeas review.

100. The immediate physical custodian is a proper respondent in a core habeas challenge to present physical confinement, and the district where Petitioner is detained is an appropriate forum for review. The Court may also include supervisory immigration officials whose actions

and records bear directly on the challenged custody and requested relief. See *Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004); 28 U.S.C. §§ 2241, 2243.

101. Detention is a severe deprivation of liberty. Where the Government arrests and detains a long-present interior resident without identifying the correct statute, producing the custody record, or making a timely individualized determination, the process is constitutionally deficient. See *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

JURISDICTION, VENUE, AND PARTIES

102. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and challenges that custody as unlawful under the Constitution, statutes, and regulations of the United States.

103. This Court has authority under 28 U.S.C. § 2243 to issue the writ or order Respondents to show cause and to require Respondents to certify the true cause of detention.

104. This Court has authority under the All Writs Act, 28 U.S.C. § 1651(a), to preserve jurisdiction, prevent transfer or removal that would frustrate habeas review, and order appropriate interim relief.

105. Venue is proper in this District because Petitioner is detained at the Metropolitan Detention Center in Brooklyn, New York, within the Eastern District of New York, and Respondents exercise custody and control over him in this District.

THE PARTIES

106. Respondent Ken Genalo is sued in his official capacity as Acting Field Office Director for ICE Enforcement and Removal Operations in New York City, and as a supervisory official responsible for Petitioner's arrest, detention, custody classification, transfer, and removal.

107. Respondent David J. Venturella is sued in his official capacity as Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement.

108. Respondent Markwayne Mullin, Secretary of the United States Department of Homeland Security, is sued in his official capacity as the head of the Department of Homeland Security.

109. Respondent Acting Attorney General Todd Blanche of the United States is sued in official capacity as the head of the United States Department of Justice.

110. Respondent Raul Maldonado, Jr., Warden, Metropolitan Detention Center, Brooklyn, New York, is sued in official capacity as Petitioner's immediate physical custodian.

THE LEGAL FRAMEWORK

THE LEGAL CONSENSUS IS DEFINITIVE FOR THIS TYPE OF DETENTION: § 1226(a) GOVERNS, THE DETENTION IS UNLAWFUL, AND RELEASE IS THE PROPER HABEAS REMEDY

111. The legal consensus in the EDNY is now definitive. The Government's theory that long-present interior residents who entered without inspection may be imprisoned under mandatory detention pursuant to 8 U.S.C. § 1225(b)(2)(A) has been rejected by the Second Circuit, by the overwhelming weight of district-court authority, and by federal judges in this District and the Southern District of New York.

112. The Second Circuit has held that § 1225(b)(2)(A) does not apply to noncitizens who are present in the United States after entering without inspection and admission, and who were not apprehended at or near the border at the time of entry. *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026). The Court made plain that § 1226(a) governs such interior detention.

113. The remedy is equally settled. Habeas is not an academic declaration that custody is unlawful; it is the practical, historic remedy for unlawful executive detention. Where ICE has detained a long-present interior resident under the wrong statute, or without a valid arrest warrant

or a valid Notice to Appear, or without a lawful pre-deprivation or contemporaneous individualized custody determination, or without the process required by the INA and the Due Process Clause, federal courts have ordered release.

114. That is what the Eastern District has done repeatedly. See *Rodriguez-Acurio v. Almodovar*, No. 25-cv-06065 (NJC), 2025 WL 3314420, at *18–24, *27–33 (E.D.N.Y. Nov. 28, 2025); *Flores Garcia v. Immigration & Customs Enf't*, No. 26-cv-02561 (NCM), slip op. at 3–5 (E.D.N.Y. May 1, 2026); *Ccorihuaman v. Genalo*, No. 26-cv-00554 (HG), 2026 WL 328983, at *1–2 (E.D.N.Y. Feb. 6, 2026); *J.U. v. Maldonado*, 805 F. Supp. 3d 482, 490–91 (E.D.N.Y. 2025); *Inestroza Carbajal v. Frazier*, No. 26-CV-2778 (SJB), 2026 WL 1309265, at *1–5 (E.D.N.Y. May 12, 2026); *Ye v. Maldonado*, No. 25-cv-06417 (AMD), 2025 WL 3521298, at *3–6 (E.D.N.Y. Dec. 8, 2025); *Zhang v. Genalo*, No. 25-CV-06781 (NRM), slip op. at 1, 38–39 (E.D.N.Y. Dec. 28, 2025); *Padilla Molina v. DeLeon*, No. 25-cv-06526 (JMA), slip op. at 4–8 (E.D.N.Y. Dec. 23, 2025); *Hinestroza Arango v. Genalo*, No. 25-CV-6720 (RER), slip op. at 6 (E.D.N.Y. Dec. 16, 2025).

115. The Eastern District's rule is straightforward. A long-present noncitizen arrested in the interior is not transformed into a mandatory § 1225(b)(2)(A) detainee merely because he once entered without inspection. Section 1226(a) governs unless the Government proves otherwise. Under § 1226(a), ICE must make a real custody determination before or contemporaneously with detention, based on danger, flight risk, community ties, family ties, compliance history, and alternatives to detention.

116. A later bond hearing, a later charging document, or a later litigation theory cannot cure a detention that was unlawful from its inception. See *Barbosa da Cunha v. Freden*, 175 F.4th 61

(2d Cir. 2026); *Rodriguez-Acurio*, 2025 WL 3314420, at *18–24, *31–33; *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130, at *1, *8–11 (E.D.N.Y. Nov. 13, 2025).

117. The Southern District has reached the same result. It has rejected the same post-hoc detention theories, excused futile administrative exhaustion, required actual process before liberty is taken, and ordered release where ICE detained noncitizens without lawful authority or meaningful process. See *Barco Mercado v. Francis*, No. 25-cv-06582 (LAK), 2025 WL 3295903, at *14–15, *21–22 (S.D.N.Y. Nov. 26, 2025); *Funes Gamez v. Francis*, 810 F. Supp. 3d 472, 520–21 (S.D.N.Y. 2025); *Khabazha v. United States Immigr. & Customs Enf't*, No. 25-cv-05279 (JMF), 2025 WL 3281514, at *8–9 (S.D.N.Y. Nov. 25, 2025); *Savane v. Francis*, 801 F. Supp. 3d 483, 501–04 (S.D.N.Y. 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–89, 493–94 (S.D.N.Y. 2025); *Sun v. Almodovar*, No. 25-cv-09262 (PKC), 2025 WL 3168759, at *3–6 (S.D.N.Y. Nov. 20, 2025); *Rojas Acevedo v. Almodovar*, No. 25-cv-7189 (LJL), 2025 WL 3034183, at *4–6 (S.D.N.Y. Oct. 30, 2025).

118. **These cases control the result here. Petitioner was not arrested at the border. He was not apprehended while seeking entry. He had lived in the United States for approximately ten years, had a fixed residence in New York, had family and community ties, had a United States citizen infant child, had employment, and had pending immigration proceedings with a scheduled Master Calendar hearing. ICE nevertheless arrested him in the interior, did not show him a judicial warrant, did not provide a meaningful explanation of the legal basis for the seizure, and did not make or serve any real contemporaneous custody determination under § 1226(a).**

119. **Respondents therefore cannot save this detention by relabeling it after the fact. If DHS claims § 1225(b)(2)(A), *Barbosa da Cunha* forecloses that theory. If DHS claims § 1226(a),**

the detention is still unlawful because DHS did not make the individualized custody determination required before or contemporaneously with detention. If DHS claims § 1231, Respondents must produce the final removal order, proof of service, appeal history, reinstatement record, and legal basis showing that the removal period actually governs. Until Respondents produce that record, this Court should not accept a conclusory custody label.

ADMINISTRATIVE EXHAUSTION IS FUTILE BECAUSE THE AGENCY CANNOT REMEDY AN UNLAWFUL ARREST FROM INCEPTION

120. Nor can Respondents force Petitioner into futile administrative exhaustion. **A bond hearing cannot remedy an unlawful arrest, cannot retroactively supply statutory authority that did not exist when liberty was taken, and cannot substitute for the individualized custody determination that DHS was required to make before or at the time of detention.**

121. **EDNY and SDNY courts have repeatedly recognized that exhaustion is futile where the agency cannot provide the relief sought or where the challenged detention is unlawful from inception.** See *Rodriguez-Acurio*, 2025 WL 3314420, at *31–33; *Barco Mercado*, 2025 WL 3295903, at *21–22; *Gopie*, 2025 WL 3167130, at *8–11.

122. The Fourth Amendment and 8 U.S.C. § 1357(a)(2) independently reinforce the same conclusion. Civil immigration enforcement does not create a Fourth Amendment-free zone. ICE cannot conduct suspicion-driven interior arrests, demand identity or immigration information without individualized grounds, and then justify custody later through charging papers or post-hoc declarations.

123. A warrantless civil immigration arrest requires both reason to believe the person is removable and reason to believe the person is likely to escape before a warrant can be obtained. Where those facts were not present and documented at the moment of arrest, the seizure was ultra vires, unreasonable, and incapable of being cured after the fact.

124. **This case presents the same statutory error, the same lack of pre-deprivation process, the same absence of a contemporaneous individualized custody determination, and the same post-hoc detention theory that federal courts in this Circuit have rejected again and again.** The remedy should be the same. The Court should order Respondents to certify the true cause of detention, produce the complete arrest and custody record, preserve and produce the relevant evidence, and order Petitioner's immediate release. No lesser remedy is adequate where the detention was unlawful from its inception.

THIS CASE SEEKS RELEASE FROM UNLAWFUL CUSTODY, NOT A REWEIGHING OF BOND

125. Petitioner seeks immediate release from this Honorable Court, not merely an order directing him back into a futile or inadequate administrative bond process. His core claim is that Respondents lacked lawful authority to arrest and detain him in the first instance, and that his present custody is unlawful because he was seized and detained in the interior of the United States without the statutory, regulatory, and constitutional safeguards required before liberty may be taken. Where detention lacks lawful authority, habeas relief is not limited to a paper declaration. The traditional and ordinary remedy for unlawful executive detention is release from custody, or other relief necessary to end the unlawful restraint. See *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973).

EDNY AND SDNY COURTS HAVE EXCUSED EXHAUSTION IN THIS PRECISE CONTEXT

The Immigration Court's Own Authority, the EOIR's Own Bond Precedent Makes Administrative Relief Inadequate

126. A bond hearing cannot cure an arrest and detention that were unlawful from inception. **Nor is a bond-hearing remedy adequate where the agency itself has adopted a binding precedent decision declaring that immigration judges lack authority to hear bond requests**

or to grant bond to aliens who are present in the United States without admission. *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216, 216, 225–27 (B.I.A. 2025). That agency decision is binding on immigration judges but not on this Court. See *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 402 (2024).

127. In this Circuit, the Government's broad *Yajure Hurtado* theory has been rejected: long-present interior residents who entered without inspection and are later arrested inside the United States are detained under 8 U.S.C. § 1226(a), not mandatorily detained under § 1225(b)(2)(A). *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026).

128. Exhaustion should therefore be excused. Section 2241 contains no statutory exhaustion requirement for immigration-detention habeas petitions; any exhaustion requirement is prudential and yields where administrative remedies are futile, inadequate, or incapable of providing meaningful relief. See *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995); *Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

129. Petitioner challenges Respondents' threshold authority to arrest and detain him at all, and the administrative process cannot retroactively supply the warrant, statutory authority, contemporaneous custody determination, individualized danger-and-flight-risk assessment, or due process that were required before detention began. **EDNY and SDNY courts have repeatedly excused exhaustion and ordered release where ICE arrested or detained a noncitizen under the wrong statute, without a lawful initial custody determination, or without the process required by § 1226(a) and the Fifth Amendment**. See *Rodriguez-Acurio v. Almodovar*, No. 25-cv-06065 (NJC), 2025 WL 3314420, at *31–33 (E.D.N.Y. Nov. 28, 2025); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025); *Padilla Molina v. DeLeon*, No. 25-cv-06526 (JMA), slip op. at 4–8 (E.D.N.Y. Dec. 23, 2025); *Barco*

Mercado v. Francis, No. 25-cv-06582, 2025 WL 3295903, at *14–15, *21–22 (S.D.N.Y. Nov. 26, 2025); *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 484–89, 493–94 (S.D.N.Y. 2025); *Tumba Huamani v. Francis*, 813 F. Supp. 3d 394 (S.D.N.Y. 2025); *Kelly v. Almodovar*, No. 25-CV-6448, 2025 WL 2381591 (S.D.N.Y. Aug. 15, 2025); *J.U. v. Maldonado*, No. 25-cv-04836, 2025 WL 2772765 (E.D.N.Y. Sept. 29, 2025); *Artiga v. Genalo*, No. 25-cv-05208, 2025 WL 2829434 (E.D.N.Y. Oct. 5, 2025).

130. This Court should follow that strong EDNY and SDNY line. Requiring Petitioner to exhaust would not promote agency correction, judicial economy, or factual development. It would instead force Petitioner into an administrative forum that lacks authority to remedy the unlawful arrest, lacks authority to declare Respondents' detention theory unlawful, cannot restore the pre-detention status quo, and, under *Yajure Hurtado* if Respondents invoke it, may refuse to hear the bond request at all. Habeas is therefore necessary now.

131. Because Respondents' custody is unlawful from its inception and because administrative remedies are futile and inadequate, this Court should excuse exhaustion, order Respondents to certify the true cause of detention under 28 U.S.C. § 2243, and grant immediate release or such other relief as law and justice require.

THE WARRANTLESS INTERIOR ARREST VIOLATED THE FOURTH AMENDMENT, 8 U.S.C. § 1357(a)(2), AND DHS'S OWN ARREST REGULATIONS

132. The Fourth Amendment applies to civil immigration arrests and seizures inside the United States, and civil immigration enforcement is not exempt from individualized constitutional, statutory, and regulatory requirements. See *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984); *Almeida-Amaral v. Gonzales*, 461 F.3d 231, 234 (2d Cir. 2006).

133. A brief immigration stop requires specific, articulable facts that reasonably warrant the intrusion. Generalized suspicion, presence in a neighborhood, language, race, ethnicity, Hispanic

or Latino appearance, or apparent national origin cannot alone supply the required individualized basis for the seizure. See *Terry v. Ohio*, 392 U.S. 1, 21–22 (1968); *United States v. Brignoni-Ponce*, 422 U.S. 873, 884–87 (1975).

134. A warrantless civil immigration arrest requires both reason to believe that the person is removable and reason to believe that the person is likely to escape before a warrant can be obtained.

135. DHS regulations likewise provide that a warrant shall be obtained except when the designated immigration officer has reason to believe the person is likely to escape before a warrant can be obtained. See 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii).

136. Probable cause and statutory arrest authority must exist at the moment of arrest.

137. Later-created charging documents, post-hoc declarations, or litigation explanations cannot cure a seizure that was unsupported by the required constitutional and statutory facts when made. See *Beck v. Ohio*, 379 U.S. 89, 96 (1964); *United States v. Di Re*, 332 U.S. 581, 595 (1948).

138. Here, Petitioner had a known address, a partner, a United States citizen infant child, employment, and pending proceedings. Those facts are inconsistent with any unexplained assertion that he was likely to escape before a warrant could be obtained.

139. Upon information and belief, ICE did not document individualized facts showing that Petitioner was likely to escape before a warrant could be obtained.

140. Upon information and belief, ICE did not show Petitioner any warrant before arresting him.

141. Upon information and belief, ICE did not make or serve any meaningful contemporaneous custody determination before or at the time Petitioner was taken into custody.

POST-HOC DETENTION THEORIES CANNOT CURE AN UNLAWFUL ARREST OR CUSTODY CLASSIFICATION

142. Agency action must stand or fall on the grounds actually invoked by the agency at the time it acted.

143. Respondents may not defend detention by substituting a new litigation theory for the legal authority and factual basis that actually existed when Petitioner was arrested and detained. See *SEC v. Chenery Corp.*, 318 U.S. 80, 94 (1943); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 20–23 (2020).

144. Courts in this Circuit have rejected post-hoc efforts to recharacterize immigration detention authority. See *Yao v. Almodovar*, 813 F. Supp. 3d 461, 476–77 (S.D.N.Y. 2025); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025).

145. Section 1226(a) requires a real custody decision before or at the time of detention.

146. Under § 1226(a), detention is discretionary, not automatic.

147. **DHS must make a real individualized custody decision under the correct statute, considering danger, flight risk, family ties, residence, community ties, compliance history, medical circumstances, employment, pending proceedings, and available alternatives to detention.**

148. A later bond process does not necessarily cure the absence of a lawful initial custody decision.

149. A bond redetermination assumes that DHS first made a valid custody determination under the correct statute. See 8 U.S.C. § 1226(a); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025).

150. A later removal order, if any, likewise does not retroactively cure an unlawful arrest or an unlawful initial custody classification.

151. Respondents must show what authority existed when Petitioner's liberty was taken on or about June 22, 2026.

CLAIM ONE

THE ARREST AND DETENTION VIOLATED THE FOURTH AMENDMENT, 8 U.S.C. § 1357(a)(2), AND DHS REGULATIONS.

The Unlawful Arrest Requires Production of the Arrest, Warrant And Custody Records

152. Petitioner repeats and realleges the preceding paragraphs.

153. ICE arrested Petitioner in the interior of the United States after he left his home to go to work.

154. ICE did not arrest Petitioner at the border.

155. ICE did not arrest Petitioner at a port of entry.

156. ICE did not arrest Petitioner while he was attempting to enter the United States.

157. Upon information and belief, ICE did not present a judicial warrant to Petitioner before arresting him.

158. Upon information and belief, ICE did not show Petitioner an administrative warrant before taking him into custody.

159. Upon information and belief, ICE did not identify individualized facts establishing that Petitioner was likely to escape before a warrant could be obtained.

160. Section 1357(a)(2) is conjunctive.

161. ICE needed reason to believe Petitioner was removable and reason to believe he was likely to escape before a warrant could be obtained.

162. Respondents have not shown either statutory requirement.

163. ICE also failed to comply with 8 C.F.R. § 287.8 and the required warrant and arrest procedures applicable to interior civil immigration arrests.

164. Because the arrest was unlawful when made, later charging papers, later custody papers, or a later detention theory cannot cure the Fourth Amendment and statutory defects.

165. The Court cannot determine the true cause of custody from conclusory labels.

166. Respondents should be required to produce the actual arrest, warrant, charging, custody, detention, transfer, video, immigration-court, body-worn camera, surveillance, radio, dispatch, agent-note, database-query, and supervisory-approval records because those materials are necessary to test whether the arrest and detention complied with the Constitution, the INA, and DHS regulations. See 28 U.S.C. § 2243; 8 U.S.C. § 1357(a)(2); 8 C.F.R. §§ 287.3, 287.8, 236.1, 1236.1.

CLAIM TWO

DHS UNLAWFULLY CLASSIFIED OR DETAINED PETITIONER WITHOUT THE § 1226(a) PROCESS REQUIRED FOR A LONG-PRESENT INTERIOR ARRESTEE.

Respondents' Possible § 1225 Theory Is Foreclosed By Second Circuit Law For Long-Present Interior Arrestees

167. Petitioner repeats and realleges the preceding paragraphs.

168. At the time of arrest and initial detention, DHS did not identify the statutory basis for detention.

169. To the extent DHS treated Petitioner as detained under 8 U.S.C. § 1225, that classification was unlawful.

170. Petitioner entered the United States in approximately 2016.

171. Petitioner was not apprehended at or near the border in connection with the present arrest.

172. Petitioner lived in the United States for approximately ten years before immigration officers arrested him in New York.

173. Petitioner was arrested in the interior of the United States.

174. Petitioner was not an arriving alien at a port of entry.

175. Petitioner was not seeking admission when he was arrested.

176. Petitioner was leaving his residence for work when ICE took him into custody.

177. Under *Barbosa da Cunha v. Freden*, 175 F.4th 61 (2d Cir. 2026), § 1226(a), not § 1225(b)(2)(A), governs this type of interior arrest.

178. A long-present noncitizen arrested in the interior years after entry is not transformed into a mandatory § 1225(b)(2)(A) detainee merely because the person once entered without inspection.

179. For such interior arrests, the governing detention authority is § 1226(a), with its discretionary custody framework, unless the Government proves another statute lawfully applies.

180. DHS's erroneous reliance on § 1225, or its failure to identify any lawful detention statute, deprived Petitioner of the discretionary custody process required under § 1226(a).

CLAIM THREE

RESPONDENTS HAVE NOT SHOWN ANY FINAL REMOVAL ORDER OR § 1231 AUTHORITY SUPPORTING CUSTODY.

Respondents Must Produce The Immigration Court Record, Proof Of Finality, And Any § 1231 Custody Basis

181. Petitioner repeats and realleges the preceding paragraphs.

182. EOIR's automated case information presently states that Petitioner's case is pending.

183. EOIR presently lists a Master Calendar hearing for July 14, 2026 before Immigration Judge Dara Reid.

188. Respondents have not produced the complete Immigration Court record.

189. Respondents have not produced any document establishing that § 1231 presently governs detention.

190. Without those records, Respondents have not shown that § 1231 currently applies.

191. Even if Respondents later rely on a final-order theory, that theory cannot substitute for the warrant, escape-risk finding, and contemporaneous custody determination required when Petitioner's liberty was first taken.

192. The legality of custody must be judged by the actual grounds and actual authority invoked when the Government took liberty away.

CLAIM FOUR

DETENTION WITHOUT A TIMELY, INDIVIDUALIZED CUSTODY DETERMINATION UNDER THE CORRECT STATUTE VIOLATES DUE PROCESS.

The Absence Of A Contemporaneous Individualized Custody Determination Violates Due Process

193. Petitioner repeats and realleges the preceding paragraphs.

194. Petitioner should have been treated under § 1226(a), not § 1225, unless Respondents can prove that another statute lawfully governed custody.

195. Under § 1226(a), DHS was required to make a real, individualized custody determination based on danger and flight risk.

196. DHS did not make a lawful custody determination under the correct statute before or contemporaneously with Petitioner's detention.

197. DHS did not meaningfully consider Petitioner's release factors, including his many years of residence in the United States, stable address, lawful permanent resident partner, United States citizen infant child, employment, pending proceedings, prior release, family ties, and available alternatives to detention.

198. DHS did not identify Petitioner as dangerous based on a real individualized custody record produced to counsel.

199. DHS did not identify individualized facts showing that Petitioner posed a flight risk sufficient to justify detention.

200. DHS instead detained Petitioner without the process required by § 1226(a) and the Due Process Clause.

201. A later bond hearing, if any, does not cure the absence of a valid initial custody determination. See *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025).

202. Petitioner is entitled to habeas relief and release.

CLAIM FIVE

RESPONDENTS VIOLATED ACCARDI BY FAILING TO FOLLOW BINDING STATUTES AND REGULATIONS.

Respondents' Failure To Follow Binding Statutes And Regulations Violates Accardi

203. Petitioner repeats and realleges the preceding paragraphs.

204. Under *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954), an agency must follow its own binding rules.

205. The Second Circuit applies the Accardi doctrine in immigration cases. *Montilla v. INS*, 926 F.2d 162, 166–69 (2d Cir. 1991).

206. The rules at issue protect liberty.

207. ICE was required to comply with the Fourth Amendment, 8 U.S.C. § 1357(a)(2), 8 C.F.R. § 287.8, 8 C.F.R. § 287.3, 8 C.F.R. § 236.1, and 8 C.F.R. § 1236.1.

208. ICE failed to comply with those rules by arresting and detaining Petitioner without producing a lawful warrant, without showing the escape-risk requirement under § 1357(a)(2),

without identifying the correct detention statute, and without a timely individualized custody determination.

209. These failures violated Accardi, the INA, DHS regulations, and due process.

210. Where ICE fails to comply with the INA, DHS arrest regulations, custody regulations, or required decision-making procedures, the violation is independently actionable under the Accardi doctrine and due process principles. See *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267–68 (1954); *Montilla v. INS*, 926 F.2d 162, 166–69 (2d Cir. 1991).

CLAIM SIX

A BOND HEARING IS FUTILE AND INADEQUATE BECAUSE IT CANNOT CURE THE THRESHOLD ILLEGALITY

211. Petitioner repeats and realleges the preceding paragraphs.

212. Petitioner does not ask this Court merely to reweigh bond.

213. Petitioner challenges the Government's threshold authority to arrest and detain him at all.

214. Exhaustion is not jurisdictional in this setting and is excused when administrative remedies are futile, inadequate, or incapable of providing the relief requested.

215. A bond hearing cannot cure an unconstitutional arrest.

216. A bond hearing cannot cure an unlawful statutory classification.

217. A bond hearing cannot cure the failure to satisfy § 1357(a)(2).

218. A bond hearing cannot cure the failure to make a lawful initial custody determination.

219. A bond hearing cannot retroactively supply a warrant, an escape-risk finding, or a contemporaneous custody decision that did not exist when Petitioner was arrested.

220. See *McCarthy v. Madigan*, 503 U.S. 140, 146–49 (1992); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995).

221. Habeas is necessary because the administrative process cannot provide prompt and complete relief from unlawful arrest and detention without lawful process.

CLAIM SEVEN

RESPONDENTS MUST PRODUCE THE FULL ARREST, CUSTODY, AND IMMIGRATION COURT RECORD NOW FOR HABEAS REVIEW

222. Petitioner repeats and realleges the preceding paragraphs.

223. Section 2243 requires Respondents to certify the true cause of detention.

224. A conclusory declaration is not enough.

225. The Court cannot decide the legality of custody without the actual records.

226. Respondents should be ordered to produce the complete A-file and all arrest, custody, detention, transfer, and removal records.

227. Required records include, but are not limited to: any judicial warrant; any administrative warrant, including Form I-200 or I-205; any Form I-213; any Form I-286; any Form I-862 Notice to Appear; any custody determination form; any bond determination or bond denial; any document identifying § 1225, § 1226, or § 1231 as the basis for custody; any arrest report; any target packet; any operational plan; any supervisory approval; any database query; any body-worn camera footage; any surveillance footage; any radio transmissions or dispatch records; any property records; the complete Immigration Court record; proof of service; any final removal order; any appeal waiver; any BIA appeal record; any reinstatement record if one exists; and any record supporting Respondents' present detention theory.

228. This is not ordinary discovery.

229. It is the minimum record necessary for habeas review.

230. Those materials are necessary to test whether the arrest and detention complied with the Constitution, the INA, and DHS regulations. See 28 U.S.C. § 2243; 8 U.S.C. § 1357(a)(2); 8 C.F.R. §§ 287.3, 287.8, 236.1, 1236.1.

231. If Respondents cannot produce records showing lawful arrest and lawful detention authority, the writ should issue and Petitioner should be released.

CLAIM EIGHT

PETITIONER PRESERVES HIS RIGHT TO EAJA FEES IF HE PREVAILS

232. Petitioner repeats and realleges the preceding paragraphs.

233. Petitioner preserves his right to seek attorneys' fees and costs under the Equal Access to Justice Act, 28 U.S.C. § 2412, if he prevails or obtains the relief requested.

234. If Petitioner obtains the requested relief, EAJA authorizes an award to a prevailing party in a civil action against the United States unless the Government's position was substantially justified or special circumstances make an award unjust. See 28 U.S.C. § 2412(d)(1)(A).

REQUEST FOR EMERGENCY RELIEF

Petitioner respectfully asks this Court to issue an Order to Show Cause under 28 U.S.C. § 2243 and to enter temporary relief preserving this Court's jurisdiction and Petitioner's access to counsel. Petitioner requests that the Court:

a) prohibit Respondents from transferring Petitioner outside the Eastern District of New York, or outside New York and New Jersey, absent further order of this Court;

b) prohibit Respondents from removing Petitioner from the United States while this habeas action is pending and until further order of this Court;

c) direct Respondents to provide reasonable, timely, confidential access to counsel, including meaningful in-person legal visitation, phone access, and interpreter access as necessary;

d) direct Respondents to file, within forty-eight hours, a full return certifying the statutory and factual basis for detention pursuant to 28 U.S.C. § 2243;

e) require production, within forty-eight hours, of all custodial, administrative, DHS, ICE, warrant, custody, immigration-court, detention, removal, and transfer records supporting Petitioner's arrest and detention;

f) require Respondents to preserve and produce all videos, body-worn camera footage, surveillance footage, radio transmissions, dispatch records, target packets, operational plans, agent notes, database-query records, supervisory approvals, and other evidence concerning the arrest;

g) produce Petitioner before this Court as necessary to effectuate meaningful habeas review;

h) grant the writ of habeas corpus and order Petitioner's immediate release from unlawful detention;

i) order that Petitioner shall not be re-detained without notice and an opportunity to be heard before a neutral decisionmaker, where Respondents bear the burden of establishing lawful detention under the correct statutory authority;

j) order Respondents to return all personal property seized from Petitioner at the time of detention and currently in Respondents' custody, possession, or control;

k) award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), should Petitioner prevail; and

l) grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

s/ S. Michael Musa-Obregon

S. Michael Musa-Obregon, Esq.
MUSA-OBREGON LAW P.C.
140 Grand Street, Suite 307

White Plains, NY 10601
michael@musa-obregon.com
718-803-1000

Dated: July 2, 2026
New York, New York

VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. § 2242

I submit this verification on behalf of Petitioner because I am one of Petitioner's attorneys. The facts in this Petition are based on information provided by Petitioner's family, available records, counsel's investigation, and counsel's review of the case file. On that basis, I verify that the statements in this Petition are true and correct to the best of my knowledge and belief.

Dated: July 2, 2026
s/ S. Michael Musa-Obregon
S. Michael Musa-Obregon, Esq.

CERTIFICATE OF SERVICE

I certify that on July 2, 2026, I caused the foregoing Petition, Emergency Motion, and proposed Order to Show Cause to be served by electronic mail and/or other authorized means on the United States Attorney's Office for the Eastern District of New York, Civil Division, and on counsel for Respondents. I also caused service on Respondents in their official capacities through the United States Attorney as permitted by applicable rule.

s/ S. Michael Musa-Obregon
S. Michael Musa-Obregon, Esq.
MUSA-OBREGON LAW P.C.
140 Grand Street, Suite 307
White Plains, NY 10601
michael@musa-obregon.com
718-803-1000
New York, New York