UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FREDDY ALVARADO QUEZADA ([redacted]), Petitioner, v. RAUL MALDONADO, JR., in his official capacity as Warden of Brooklyn Metropolitan Detention Center; TODD LYONS, Acting Director, ICE; MARKWAYNE MULLIN, in his official capacity as Secretary of DHS; TODD BLANCHE, in his official capacity as Acting U.S. Attorney General; and KENNETH GENALO, in his official capacity as Director of ICE New York City Field Office Respondents.	Case No.: 26-4028 **VERIFIED PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241**

INTRODUCTION

1. Petitioner Freddy Alvarado Quezada ("Petitioner" or "Mr. Alvarado") is a forty-year-old native of Ecuador who has lived in this country for over 15 years. His wife, Laura Rojas ("Ms. Rojas") is a lawful permanent resident of the United States. On October 28, 2025, ICE officers arrested and detained Mr. Alvarado and placed him in removal proceedings; he has been in ICE custody ever since.

2. On January 15, 2026, Mr. Alvarado, who was then detained in Orange County, New York, filed a petition for habeas corpus in the United States District Court for the Southern District of New York. Hon. John Cronan denied the petition on February 11, 2026, finding that Mr. Alvarado, having entered the United States without inspection and having lived here without status ever since, was lawfully detained under 8 U.S.C. §

1225(b)(2)(A) ("Section1225(b)(2)(A)"). He was subsequently transferred to the Metropolitan Detention Center in Brooklyn, New York, where he remains detained.

3. On April 28, 2026, the United States Court of Appeals for the Second Circuit issued its decision in *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1146044 (2d Cir. Apr. 28, 2026) ("*Barbosa da Cunha*"), holding that 8 U.S.C. § 1226(a) ("Section 1226(a)"), and not Section 1225(b)(2)(A) applies to individuals who, like Mr. Alvarado, "are present in the United States after entering the country without inspection and admission, and who were not apprehended at or near the border at the time of entry." *Barbosa da Cunha*, *2-3.

4. Mr. Alvarado's is not subject to a final order of removal. He underwent removal proceedings in New York City Immigration Court, where he sought Cancellation of Removal under 8 U.S.C. § 1229b(b)(1), based on hardship to his lawful permanent resident spouse, his long history in the United States, his good moral character, medical hardship to his wife, and the absence of any criminal conviction that would disqualify him for that relief.

5. Mr. Alvarado is neither a danger to his community nor a flight risk. He has had one encounter with law enforcement since he arrived in this country: a 2018 arrest for driving under the influence, which resulted in a conviction under NY VTL § 1192(1) – a non-criminal traffic infraction. Other than this single blemish, the record conclusively demonstrates that he is a law abiding, loving, and responsible person who poses a danger to no one.

6. Likewise, Mr. Alvarado is not a flight risk. He has a pending application for relief, a spouse who is reliant on him and to whom he is devoted, and significant additional ties to

this country and his community, including a US citizen stepson and a large number of neighbors, friends and business associates; owning a home in Poughkeepsie, New York; running a construction business; and longtime church membership.

7. Mr. Alvarado has now been detained for more than eight months, without a bond hearing, in violation of the clear mandate of the INA and *Barbosa da Cunha*. His continued detention, if authorized at all, arises under 8 U.S.C. § 1226(a), which affords him the right to an individualized custody determination and a bond hearing — neither of which he has received. Further, his arrest and continued detention without any individualized assessment, without notice, and without a hearing violates the Due Process Clause of the Fifth Amendment and the Administrative Procedure Act. The only appropriate remedy is his immediate release.

JURISDICTION

8. This action arises under the Constitution of the United States and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 *et seq.*

9. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1).

10. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et seq.*, the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

11. Venue is proper because Petitioner is detained at the Metropolitan Detention Center, located at 80 29th St, Brooklyn, NY 11232, which is within the jurisdiction of this District. *See Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004) (citing *Ex Parte Endo*, 323 U.S. 283 (1944)).

12. Venue is also proper in this District because Respondents are officers, employees, or agencies of the United States and a substantial part of the events giving rise to Petitioner's claims occurred in this District.

REQUIREMENTS OF 28 U.S.C. § 2243

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

14. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

PARTIES

15. Mr. Alvarado is a forty-year-old native of Ecuador who has lived in this country for over 15 years. His wife, Laura Rojas is a lawful permanent resident of the United States. He is stepfather to a 20-year-old United States citizen, owns a home and a business, and, as

established before EOIR Immigration Court, has longstanding, strong ties to the United States. On October 28, 2025, ICE officers arrested and detained Mr. Alvarado. He has been in ICE custody ever since.

16. Respondent Raul Maldonado, Jr. is the Wardon of Brooklyn Metropolitan Detention Center. Respondent Maldonado has direct control over Petitioner's detention. He is sued in his official capacity.

17. Respondent Todd M. Lyons is the Acting Director of ICE. He is sued in his official capacity.

18. Respondent Kenneth Genalo is the Director of ICE's New York City Field Office. Respondent Genalo has direct control over Petitioner's detention. He is sued in his official capacity.

19. Respondent Markwayne Mullin is Secretary of the Department of Homeland Security and oversees ICE. He is sued in his official capacity.

20. Respondent Todd Blanche is the Acting Attorney General of the United States. He is sued in his official capacity.

EXHAUSTION OF REMEDIES

21. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. Any requirement that Mr. Alvarado further exhaust administrative remedies would be inappropriate insofar as: (1) DHS, by its actions, has demonstrated that it is unwilling to grant parole; (2) irreparable injury — namely, an ongoing deprivation of his liberty — will likely occur without immediate

relief; and (3) Petitioner has raised substantial constitutional questions relating to his due process rights. *See Beharry v. Ashcroft*, 329 F.3d 51, 62 (2d Cir. 2003).

STATEMENT OF FACTS

A. Mr. Alvarado's Personal and Family

22. Mr. Alvarado arrived at the United States first arrived in the United States on or about July 1, 2011, entering without inspection. He has remained in this country ever since that time.

23. Mr. Alvarado first met his wife, Laura Rojas, in 2012. The two moved in together in 2013, and have been in a stable, committed relationship ever since. They were married on December 17, 2025.

24. Mr. Alvarado has lived with and acted as a step-parent to Ms. Rojas's 20-year-old US citizen son, Steven Muyolema Rojas since he was eight years old; he is also close with Ms. Rojas's older son, Max Stalin Muyolema Rojas (age 26), who lived with the family when for two years beginning in 2019.

25. Mr. Alvarado has worked consistently in the construction industry since his arrival. In 2025, after years working as an independent contractor, he formally established his own construction business, [redacted]

26. Mr. Alvarado has had just one encounter with law enforcement during his time in the United States: a 2018 arrest for driving under the influence, which resulted in a conviction under NY VTL § 1192(1) – a non-criminal traffic infraction, for which he was required to and did attend a weekly impaired driver course for a few hours per week over the course of several weeks.

27. Mr. Alvarado and Ms. Rojas own a home together in Poughkeepsie, New York, where they have lived since 2018. Mr. Alvarado has been the family's primary breadwinner, responsible for major expenses, household maintenance, and repairs. In addition, Mr. Alvarado financially supports his son and his wife's parents abroad.

28. Ms. Rojas suffers from a number of painful, serious medical conditions, including [redacted] for which treatment is ongoing, and which may require surgical intervention. In addition to being the family's main breadwinner, Mr. Alvarado is his wife's source of emotional and practical support, and he is absolutely indispensible to her in addressing her significant, ongoing medical problems.

B. Immigration History

29. As mentioned above, Mr. Alvarado entered the United States without inspection on or about July 1, 2011. He has lived in the United States ever since.

30. On October 28, 2025, ICE officers stopped Mr. Alvarado while he was driving, arrested and detained him in the Orange County Jail in Goshen, NY, and placed him in removal proceedings. He has been in ICE custody ever since.

31. His wife filed an I-130 on his behalf, and Mr. Alvarado sought Cancellation of Removal before the immigration court, based on hardship to Ms. Rojas, Mr. Alvarado's 15+ years of presence in the United States, his good moral character, and the absence of a criminal conviction that would render him ineligible for that relief. The Court denied that application on January 28, 2026. Mr. Alvarado filed a timely appeal, which is currently pending before the Board of Immigration Appeals.

32. Mr. Alvarado has not been offered the opportunity to seek bond before the immigration court. Respondents provided Mr. Alvarado with no notice or opportunity to be heard prior to arresting and detaining him, Respondents have offered him no meaningful opportunity to be heard or challenge his detention since detaining him. Upon information and belief, ICE did not conduct any individualized assessment of Petitioner's flight risk or dangerousness before detaining him. ICE did not consider his years of continuous residence in the United States, his meritorious eligibility for immigration relief, his nearly spotless criminal history, or his family and employment ties.

33. On February 11, 2026, District Judge John Cronan of the United States District Court for the Southern District of New York denied Mr. Alvarado's initial habeas corpus petition on the ground that he was subject to mandatory detention under Section 1225(b)(2)(A). *See Alvarado Quezada v. Ladeon Francis,* 26 Civ. 387 (S.D.N.Y., February 11, 2026) (JPC).

34. That same month, Mr. Alvarado was transferred from Orange County to the Metropolitan Detention Center in Brooklyn, New York, where he remains detained now.

LEGAL FRAMEWORK

A. The INA's Distinct Detention Provisions: § 1225(b) vs. § 1226(a)

35. The INA contains distinct detention provisions. Section 1225(b) generally requires mandatory detention of certain noncitizens "arriving" to the United States, known as "arriving aliens." 8 U.S.C. § 1225(b)(2)(A). Section 1225(b) provides that "in the case of an alien who is an applicant for admission, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained." *Id.* A noncitizen detained under § 1225(b)(2)

may be released only if paroled "for urgent humanitarian reasons or significant public benefit" pursuant to 8 U.S.C. § 1182(d)(5)(A). *See Gomes v. Hyde*, 2025 WL 1869299, at *2 (D. Mass. July 7, 2025) *(quoting Jennings v. Rodriguez*, 583 U.S. 281, 300 (2018)).

36. Mandatory detention under § 1225 is premised on an immigration officer's determination that a noncitizen is: (1) an "applicant for admission"; (2) "seeking admission"; and (3) "not clearly and beyond a doubt entitled to be admitted." *Lopez Benitez v. Francis*, 795 F. Supp. 3d 475, 487 (S.D.N.Y. 2025).

37. In *Barbosa da Cunha v. Freden*, No. 25-3141, 2026 WL 1827404 *15 (2d Cir. Apr. 28, 2026), the Second Circuit addressed the definitions of "applicant for admission" and "seeking admission." As to the former term, the Court explained that it was bound by the explicit statutory language: "'applicant for admission' is defined by statute to mean any noncitizen who is present in the United States and has not been admitted, or is arriving in the United States." *Id.* quoting § 1225(a)(1). Further, the Court noted that "admission" means "the lawful entry of the alien into the United States after inspection and authorization." *Barbosa da Cunha* at *15, quoting 8 U.S.C. § 1101(a)(13)(A). The Court construed the statutorily undefined term "entry" its normal meaning: "'coming from outside." *Barbosa da Cunha* at *15, quoting *United States ex rel. Claussen v. Day*, 279 U.S. 398, 401 (1929).

38. The *Barbosa da Cunha* court went on to hold that the term "'alien seeking admission,' ... refers to a noncitizen who is seeking admission right now. . ." *Id.* at 22. The term has a limited temporally scope, referring only to a person currently seeking lawful entry into the United States. Thus, the Court held:

> Section 1225(b)(2) therefore applies only to (1) noncitizens who are present and have not been admitted, and (2) are requesting (3) lawful entry into the United States after inspection and authorization. Here, although Petitioner is an applicant for admission under the statutory definition because he is present in the country and has never been admitted, it simply cannot be said that he is 'seeking admission," as he is not requesting lawful entry into the United States.

Id., at 17.

39. Other courts in this circuit and elsewhere have examined the term "seeking admission" and found that the use of a present participle, "seeking," "necessarily implies some sort of present-tense action." *Lopez Benitez*, 795 F. Supp. 3d at 488 (quoting *Martinez v. Hyde*, 792 F. Supp. 3d 211, 218 (D. Mass. 2025)). "Seeking admission" means presently trying to enter the United States at or near the border. *See J.G.O. v. Francis*, 2025 WL 3040142, at *3 (S.D.N.Y. Oct. 28, 2025) (noting that "seeking admission" would "require[] [a noncitizen] . . . to want to go into the country"*); Alvarez Ortiz v. Freden,* 808 F.Supp.3d 579, 592 (W.D.N.Y. Nov. 4, 2025) (observing that "seeking admission" "must refer to seeking physical entry at the border, not the legal right to enter"). *See also Leng May Ma v. Barber*, 357 U.S. 185, 187 (1958) ("[O]ur immigration laws have long made a distinction between those [noncitizens] who have come to our shores seeking admission . . . and those who are within the United States after entry, irrespective of its legality."). "[A]lthough § 1225(b)(2)(A) applies only to those noncitizens who are actively 'seeking admission' to the United States, it cannot, according to its ordinary meaning, apply to [a petitioner], because he has already been residing in the United States for several years." *Lopez Benitez*, 795 F. Supp. 3d at 489.

40. By contrast, § 1226(a) allows the Attorney General to either detain or release a noncitizen undergoing removal proceedings. 8 U.S.C. § 1226(a); *accord Dep't of Homeland Sec. v.*

Thuraissigiam, 591 U.S. 103, 108 (2020) (explaining that under § 1226(a), a noncitizen may either be "detained" or "allowed to reside in this country" pending removal proceedings). As the Supreme Court has noted, the discretionary detention framework under § 1226 has long been the "default rule" for noncitizens "already in the country" during removal proceedings. *Jennings v. Rodriguez*, 583 U.S. 281, 281 (2018). DHS may release a noncitizen on bond or conditional parole after an ICE officer has assessed their flight risk and danger to the community and has determined release is appropriate. 8 U.S.C. § 1226(a)(2); 8 C.F.R. § 236.1(c)(8). If the officer decides to detain the noncitizen, the detainee may request a bond hearing to appeal the officer's decision to an immigration judge. 8 C.F.R. § 1003.19(a).

B. Detention Without Individualized Assessment Violates Due Process

41. Even when noncitizens are subject to mandatory detention under § 1225, courts in this Circuit have routinely held that: (a) such individuals have a protected liberty interest in remaining out of custody after release; (b) revocation of that liberty without basic notice and an opportunity to be heard violates procedural due process; and (c) § 1225(b) does not authorize such re-detention or strip them of due process protections. *See Savane*, 2025 WL 2774452, at 6–9 ("Even assuming that § 1225 applies, as Respondents contend, Petitioner's due process rights were violated because Respondents did not afford Petitioner any process at all before detaining him"); *Munoz Materano v. Arteta,* 804 F.Supp.3d 395, 417 (S.D.N.Y. Sept. 12, 2025) (citations removed) ("Even if, arguendo, ICE had the statutory, discretionary authority to detain [petitioner] pursuant to § 1225, the question is whether, in exercising that authority, ICE is required to adhere to the basic principles of due process. There is no dispute that it is."); *Kelly v. Almodovar*, 2025 WL

2381591, at *3 (S.D.N.Y. Aug. 15, 2025) ("In light of the undisputed facts, there is no doubt that Respondents' ongoing detention of [Petitioner] with no process at all, much less prior notice, no showing of changed circumstances, or an opportunity to respond, violates his due process rights").

42. In *Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 at *13 (E.D.N.Y. Nov. 28, 2025), the court held that detention was unlawful "from its inception" because the petitioner was detained under the wrong statute and without the notice or process required. The court ordered immediate release.

43. "The Supreme Court has been unambiguous that executive detention orders, which occur without the procedural protections required in courts of law, call for the most searching review." *Velasco Lopez v. Decker*, 978 F.3d 842, 850 (2d Cir. 2020).

C. The Due Process Clause Applies to All Persons in the United States

44. The Fifth Amendment provides that no person shall be deprived of liberty without due process of law. The Due Process Clause applies to "all persons within the United States," regardless of immigration status. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). "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." *Id.* at 690.

45. Although Congress has broad power over immigration, civil immigration detention is subject to constitutional limits. Civil detention must bear a reasonable relation to its purposes, such as preventing flight or protecting the community. *See id.* at 690–92; *Jennings v. Rodriguez*, 583 U.S. 281, 297–303 (2018).

46. The Administrative Procedure Act prohibits agency action that is arbitrary and capricious. 5 U.S.C. § 706(2)(A). An action is arbitrary and capricious if 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." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

D. The Habeas Statute Affords Broad Equitable Remedies

47. The "equitable and flexible nature of habeas relief" affords district courts significant discretion over the appropriate remedies for violations of law and the Constitution. *Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *see also Schlup v. Delo*, 513 U.S. 298, 319 (1995) ("[H]abeas corpus is, at its core, an equitable remedy"). The habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted." *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968).

CLAIMS FOR RELIEF

COUNT ONE
Violation of the INA: Detention Under the Wrong Statutory Provision

48. The allegations in the above paragraphs are re-alleged and incorporated herein.

49. Petitioner's current detention results from this executive administration's abrupt change in position that the mandatory detention provisions of Section 1225(b)(2) apply to longtime residents of the United States. Until last year, DHS had historically applied

Section 1226 and its discretionary release provisions to the vast majority of noncitizens who, like Petitioner, had long resided in this country. Bucking decades of statutory interpretation and practice, the government now advocates for an expansive interpretation of the mandatory detention provisions of Section 1225(b)(2) to justify the detention of all noncitizens like Petitioner without lawful status, who entered the country without documentation, regardless of whether that individual has long resided in the United States.

50. Section 1225(b)(2)(A) authorizes mandatory detention of noncitizens who are "applicants for admission" and "seeking admission" at the border. Petitioner is not seeking admission: he was taken into custody after nearly 15 years of physical presence in this country. The Petitioner's situation is therefore materially identical to that of the petitioners in *Barbosa da Cunha*: as a person who is not presently requesting lawful entry into the United States, he is not subject to mandatory detention, his detention is not authorized by Section 1225(b), and the application of that provision to Petitioner violates the INA and binding Second Circuit precedent.

51. Rather, Petitioner's detention pending removal under Section 1226(a) is discretionary, and noncitizens detained under the statute are afforded an initial determination as to eligibility for release and the opportunity for a bond hearing upon detention. 8 C.F.R. § 1236.1(d)(1). Here, Petitioner was afforded neither of these guarantees in violation of Section 1226(a).

COUNT TWO
Violation of the Fifth Amendment's Due Process Clause
(Detention Without Pre-Deprivation Hearing or Individualized Assessment)

52. The allegations in the above paragraphs are re-alleged and incorporated herein.

53. Petitioner has a protected liberty interest in remaining at liberty. He has resided in the United States for more than fifteen years, has worked consistently, paid taxes, and has deep ties to his family and community.

54. The Fifth Amendment requires that before the government deprives a person of liberty, it must provide at least basic procedural protections, including notice of the reasons for the deprivation and a meaningful opportunity to be heard. *See Zadvydas*, 533 U.S. at 693–94; *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976).

55. ICE detained Petitioner on October 28, 2025, without prior written notice, without any explanation of why detention was warranted, and without affording him any opportunity to contest his detention before or shortly after it occurred.

56. Upon information and belief, ICE did not conduct any individualized assessment of Petitioner's flight risk or dangerousness before detaining him. ICE did not consider his years of continuous residence in the United States, his strong family and community ties, his work history, his lack of a meaningful criminal history, his home ownership, or any of the other factors connecting him to the United States.

57. By detaining Petitioner without notice, without an individualized assessment, and without a meaningful opportunity to be heard, ICE violated Petitioner's procedural due process rights under the Fifth Amendment.

Application of the *Mathews v. Eldridge* Factors

58. "In the Second Circuit, the balancing test laid out by the Supreme Court in *Mathews v. Eldridge* . . . applies when determining the 'adequacy of process in the context of civil immigration confinement.'" *Hyppolite v. Noem*, 2025 WL 2829511, at *13 (E.D.N.Y.

Oct. 6, 2025). The Mathews factors are: (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." *Mathews*, 424 U.S. at 335.

i. Petitioner's Liberty Interest

59. Petitioner's private interest "is the most significant liberty interest there is — the interest in being free from imprisonment." *Black v. Decker*, 103 F.4th 133, 151 (2d Cir. 2024) (quoting *Velasco Lopez*, 978 F.3d at 851). The Buffalo Federal Detention Facility, "while perhaps not akin to a maximum-security prison," is not "meaningfully different from at least a low-security penal institution for criminal detention." *Wilson v. Barr*, 2020 WL 13554798, at *7 (W.D.N.Y. May 1, 2020).

60. Petitioner's liberty interest is even more heightened because the deprivation of his liberty is not the result of any criminal adjudication. *See Alvarez Ortiz*, 808 F.Supp.3d at 599 ("[I]t is important to recognize that the deprivation of liberty that individuals detained under section 1226(a) experience is 'not the result of a criminal adjudication.' This, too, heightens [the petitioner's] interest in his liberty.").

ii. Risk of Erroneous Deprivation

61. The risk of erroneous deprivation is particularly high here. Petitioner's detention without any individualized assessment establishes a high risk of erroneous deprivation of his protected liberty interest. This is underscored by Respondents' detention of Petitioner

under a newly-imposed interpretation of § 1225(b)(2) "that runs counter to precedent and decades of past practice." *Alvarez Ortiz*, 808 F.Supp.3d at 600.

iii. Government's Interests

62. The government's discretion to detain individuals under § 1226(a) "'is valid where it advances a legitimate governmental purpose,' such as 'ensuring the appearance of aliens at future immigration proceedings and preventing danger to the community.'" *Lopez Benitez*, 795 F. Supp. 3d at 495-96. But the record does not demonstrate that Petitioner presents those risks. While Petitioner has, with his entry without inspection, run afoul of the immigration laws, that act is confined to 2011. He has lived in the United States, worked, paid his taxes, raised a family, and been an otherwise responsible member of his community ever since. No individualized assessment would support Petitioner's detention. Rather, if it were not for a policy change reversing decades of past practice, Petitioner would not be detained.

63. While providing a bond hearing or other form of due process prior to depriving someone of their liberty poses some degree of "fiscal and administrative burden," *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1209 (9th Cir. 2022) (quoting *Mathews*, 424 U.S. at 335), the government has not provided any evidence that the burden would be a significant one. Moreover, Petitioner's prolonged detention has already caused — and will inevitably continue to cause — far greater expenses than the cost of conducting a bond hearing, thereby placing an unnecessary burden on the public.

64. Accordingly, the arrest and continued detention of the Petitioner by ICE violated the Due Process Clause of the Fifth Amendment. Rather than exercising the individualized discretion required by law, ICE effectuated Petitioner's detention pursuant to a blanket

policy — without notice, without an individualized assessment, and without affording Petitioner any opportunity to be heard. Because Petitioner possessed a protected liberty interest in his continued release from custody, the Government's failure to provide even the most basic procedural safeguards resulted in an unconstitutional deprivation of liberty. *See Mathews v. Eldridge*, 424 U.S. 319 (1976).

65. Due process requires the government to bear the burden of proving by clear and convincing evidence that detention is justified at a bond hearing under § 1226(a). *Adejola v. Barr*, 408 F. Supp. 3d 284, 287 (W.D.N.Y. 2019); *see also Onosamba-Ohindo v. Searls*, 678 F. Supp. 3d 364, 374 n.2 (W.D.N.Y. 2023). Under the circumstances here, "[g]iven the significant liberty interest at stake, the high risk of erroneous deprivation, and Respondents' failure to show a significant interest in [his] detention," ongoing detention of Petitioner "with no process at all, much less prior notice, no showing of changed circumstances, or opportunity to respond," violates due process. *Lopez Benitez*, 795 F. Supp. 3d at 501.

COUNT THREE
Violation of the Fifth Amendment's Due Process Clause
(Arbitrary and Excessive Detention)

66. The allegations in the above paragraphs are re-alleged and incorporated herein.

67. Civil detention must be strictly limited and may not be excessive in relation to its purported non-punitive purposes. *See Zadvydas*, 533 U.S. at 690–92.

68. ICE's detention of Petitioner bears no reasonable relationship to any legitimate governmental objective. Petitioner has lived in the United States for more than fifteen years, has worked and paid taxes, is not a threat to his community, and is not subject to a final order of removal. Other than his entry with inspection, he has not violated any

immigration laws and there is no basis whatsoever to conclude that he is a danger to the community.

69. Petitioner's detention is, in practical effect, punitive. By detaining Petitioner in these circumstances, without individualized assessment and without showing that less restrictive alternatives are inadequate, ICE is subjecting him to arbitrary and excessive detention in violation of substantive due process.

COUNT FOUR
Violation of the Administrative Procedure Act

70. The allegations in the above paragraphs are re-alleged and incorporated herein.

71. The Administrative Procedure Act prohibits agency action that is arbitrary and capricious. 5 U.S.C. § 706(2)(A).

72. Petitioner's detention involved no apparent individualized inquiry and no legal basis under the INA. Respondents have no reason to believe Petitioner had become a flight risk or danger to the community. His detention was and is arbitrary and capricious.

ARGUMENT FOR IMMEDIATE RELEASE

I. Release Is the Customary and Most Appropriate Remedy in Habeas Proceedings

73. Release is the customary remedy in habeas proceedings. *See* 28 U.S.C. § 2243 (the habeas court shall "dispose of the matter as law and justice require"); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) (finding "that the traditional function of the writ is to secure release from illegal custody"). The most appropriate remedy in this case, where Petitioner has been detained in violation of both the INA and due process, is release on recognizance without further conditions of release. *See Munaf v. Geren*, 553 U.S. 674,

694 ("Habeas is at its core a remedy for unlawful executive detention" … "[t]he typical remedy for such detention is, of course, release").

74. This Court and dozens of others across the country have ordered immediate release in cases involving the detention based on erroneous application of § 1225. *See, e.g. Rodriguez-Acurio v. Almodovar*, 2025 WL 3314420 (E.D.N.Y. Nov. 28, 2025); *Artiga v. Genalo*, 25-CV-5208 (OEM) (E.D.N.Y. Oct 05, 2025); *Crespo Tacuri v. Genalo*, 25-CV-06896 (NCM) (E.D. N.Y. Jan 06, 2026).

75. Release is the only appropriate remedy for the constitutional violations in this case, including the lack of pre-deprivation notice or individualized review before Petitioner's arrest, which cannot be remedied by a post-deprivation hearing. *See Crespo Tacuri v. Genalo*, 2026 WL 35569, at *7 (E.D.N.Y. Jan. 6, 2026) (finding that post-deprivation review cannot remedy the due process violation of detaining petitioner with no process or individualized assessment); *Qasemi v. Francis,* 2025 WL 3654098, at *14 (S.D.N.Y. Dec. 17, 2025) (holding that bond hearing would not be an adequate remedy for the due process violations in petitioner's sudden arrest and detention); *Alfaro Herrera v. Baltazar*, 2026 WL 91470, at *13 (D. Colo. Jan. 13, 2026) ("because it has already been determined that Petitioner is neither a flight risk nor a danger to the community" … "the Court finds that Respondents' violations of Petitioner's rights are best remedied by ordering Petitioner's immediate release from immigration detention"); *Moctezuma Macias v. Henkey,* 2026 WL 18809, at *5 (D. Idaho Jan. 2, 2026) (ordering immediate release instead of causing additional delay through a bond hearing given the government's repeated use of unlawful detention policies across the country, causing petitioners to "sit in jail waiting for a judicial decision,").

76. Here, the Petitioner was taken into custody without notice, without a stated reason, and without any opportunity to contest his detention. He was and remains eligible for Cancellation of Removal, and thus has had every incentive to appear in immigration court. As he had lived in the United States more than fifteen years as a law abiding partner, husband, stepfather and community member who worked hard, paid taxes, and contributed to his community, there was no basis to conclude that Mr. Alvarado represented a danger of any kind to his community. There was simply no reason to place him in detention. That detention has continued, without a bond hearing, for more than eight months, largely because the immigration court erroneously found that Mr. Alvarado was subject to § 1225, rather than § 1226, and therefore not eligible for bond. A bond hearing would have established that Mr. he had strong family and employment ties to his community, a meritorious immigration petition that gave him every reason to appear in immigration court, and no significant criminal convictions. The erroneous denial of a bond hearing has thus resulted in months of baseless detention for Mr. Alvarado. Only release can restore the *status quo ante* and make Mr. Alvarado whole.

II. A Bond Hearing Before an Immigration Judge Would Be Inefficient and Inadequate

77. A bond hearing by an immigration judge ("IJ") is not the most appropriate or efficient use of this Court's equitable authority. Recent actions by ICE attorneys and immigration judges during and after habeas court-ordered bond hearings have necessitated enforcement proceedings across the country, creating significant extra work for courts and parties while petitioners' unlawful detention continues.

A. ICE's Use of the "Automatic Stay" of an IJ Bond Grant

78. In the last year, ICE has frequently appealed IJ bond grants to the Board of Immigration Appeals ("BIA") and invoked the "automatic stay" regulation, 8 C.F.R. § 1003.19(i)(2), to keep petitioners detained despite an IJ bond grant. Dozens of habeas courts have ruled that the automatic stay violates due process. *See, e.g.*, *Merchan-Pacheo v. Noem*, 2026 WL 88526, at *16 (D. Colo. Jan. 12, 2026); *M.P.L. v. Arteta,* No. 25-cv-5307, 2025 WL 3288354, at *7 (S.D.N.Y. Nov. 25, 2025) (noting that "at least 50 district court decisions across the United States in the last 6 months alone" have found that DHS's use of the automatic stay provision violates or likely violates due process); *Garvey v. Noem*, 2026 WL 612302, at 3 (W.D. Mo. Mar. 4, 2026) (granting TRO and ordering immediate release given the "blatant absence of procedural due process" in ICE's use of automatic stay); *Otilio B.F. v. Andrews*, 2025 WL 3152480, at *11 (E.D. Cal. Nov. 11, 2025); *Guasco v. McShane*, 2025 WL 3270201, at *2 (M.D. Pa. Nov. 24, 2025).

B. ICE Unilaterally Imposing Conditions of Release Ordered by No Judge

79. In other cases, ICE has applied onerous electronic GPS ankle monitors or other unnecessary conditions of release that neither the habeas court nor the immigration court ordered, requiring additional litigation. *See Gonzalez Centeno v. Lowe*, 2026 WL 196513, at *2 (M.D. Pa. Jan. 26, 2026); *Diahn v. Lowe,* 2026 WL 84576, at *5 (M.D. Pa. Jan. 12, 2026); *Batz Barreno v. Baltasar*, 2026 WL 120253, at *3 (D. Colo. Jan. 15, 2026); *Orellana Juarez v. Moniz*, 788 F. Supp. 3d 61, 70 (D. Mass. 2025); *N- N- v. McShane*, 2025 WL 3143594, at *4 (E.D. Pa. Nov. 10, 2025); *da Silva v. LaForge*, 2026 WL 45165, at *4 (D.N.J. Jan. 7, 2026).

C. Widespread Noncompliance with Federal Habeas Court Orders

80. Hundreds of other cases have involved Respondents' outright refusal, inability, or failure to hold a timely bond hearing after being ordered to do so. *See Bautista v. Santacruz*, 2026 WL 468284, at *4 (C.D. Cal. Feb. 18, 2026); *Rodriguez Vazquez v. Hermosillo*, 2026 WL 102461, at *1 (W.D. Wash. Jan. 14, 2026); *Juan T.R. v. Noem*, 2026 WL 555601, at *1 (D. Minn. Feb. 26, 2026); *Fernandez Alvarez v. Noem*, 2026 WL 598614, at *1 (M.D. Fla. Mar. 4, 2026); *Cartagena Hueso v. Soto*, 2026 WL 539271, at *3 (D.N.J. Feb. 26, 2026).

81. Government attorneys have also tried to disavow responsibility for ensuring their clients will comply with future court orders. *See Gomez Rodriguez v. Noem*, 2025 WL 3771268, at *2 (M.D. Fla. Dec. 31, 2025); *Vargas v. Bondi*, 2025 WL 3300446, at *5 (W.D. Tex. Nov. 12, 2025); *O.F.C. v. Almodovar*, 2026 WL 74262, at *16 (S.D.N.Y. Jan. 9, 2026).

D. Immigration Judge Failures to Conduct Bond Hearings as Ordered

82. In some cases, immigration judges have failed to conduct a neutral, individualized bond hearing or to place the burden of proof as ordered by the habeas court. *See Ulloa Bueno v. Soto*, 2026 WL 509102, at *2 (D.N.J. Feb. 24, 2026); *Pedroso de Oliveira v. Freden,* 2025 WL 3554686, at *1 (W.D.N.Y. Dec. 11, 2025); *Mathon v. Searls*, 623 F. Supp. 3d 203, 208 (W.D.N.Y. 2022).

83. To avoid a wasteful round of enforcement proceedings — or even two — while unlawful detention continues, this Court should grant release.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests this Court grant the following:

A. Temporarily enjoin Respondents from transferring Petitioner to another jurisdiction, in order to maintain the *status quo* and to ensure that Petitioner can fully participate in these proceedings and maintain adequate access to legal counsel;

B. Maintain jurisdiction over this matter;

C. Expedite consideration of this Petition under 28 U.S.C § 1657 ("the court shall expedite the consideration of any action brought under chapter 153", which includes petitions for habeas corpus);

D. Order Respondents to show cause why the writ should not be granted within three days and set a hearing on this Petition within five days of the return, as required by 28 U.S.C. § 2243;

E. Declare that Petitioner's detention under 8 U.S.C. § 1225(b) is unlawful and that Petitioner is properly detained, if at all, under 8 U.S.C. § 1226(a);

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

G. Declare that Respondents' actions violate the Administrative Procedure Act;

H. Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately;

I. In the alternative, order this Court to hold its own bail hearing to determine whether Respondents can prove by clear and convincing evidence that Petitioner must remain in custody, or whether he may be released on recognizance, an appropriate bond in light of his ability to pay, or supervised release. *See L.G.M. v. LaRocco*, 788 F. Supp. 3d 401, 405–07 (E.D.N.Y. 2025); *Flores-Powell v. Chadbourne*, 677 F. Supp. 2d 474–78 (D. Mass. 2010);

J. In the further alternative, if this Court orders an immigration court bond hearing, order that: (i) DHS bears the burden of proof to justify continued detention by clear and convincing evidence; (ii) DHS is barred from invoking the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), if the immigration judge grants bond; (iii) the immigration judge consider Petitioner's ability to pay bond and alternatives to detention; and (iv) the parties submit a status update to the Court promptly after any hearing;

K. 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

L. Grant any further relief this Court deems just and proper.

Dated: July 6, 2026

Respectfully submitted,

/s/ Jesse Levine
Jesse Levine
Ehrinpreis and Levine, PLLC
48 Wall Street, Ste. 1026
New York, NY 10005
(917) 968-5141
jesse@el-pllc.com

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

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. 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: July 6, 2026

/s/ Jesse Levine
Jesse Levine
Ehrinpreis and Levine, PLLC
48 Wall Street, Ste. 1026
New York, NY 10005
(917) 968-5141
jesse@el-pllc.com