UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JUAN CAMILO REYES DIAZ,

Petitioner,

v.

PETER SUKMANOWSKI, in his official capacity as Acting Field Office Director, Buffalo Field Office, U.S. Immigration and Customs Enforcement;
DAVID VENTURELLA, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement;
MARKWAYNE MULLIN, in his official capacity as Secretary of Homeland Security; and
TODD BLANCHE, in his official capacity as Acting United States Attorney General,

Respondents.

Case No. 9:26-cv-1859 (AJB)

EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Immigration No. [redacted]

U.S. DISTRICT COURT – N.D. OF N.Y.
FILED
Sep 30 - 2026
John M. Domurad, Clerk

EMERGENCY PETITION FOR A WRIT OF HABEAS CORPUS

PRELIMINARY STATEMENT

1. Petitioner Juan Camilo Reyes Diaz ("Mr. Reyes Diaz") is a forty-three-year-old citizen of Colombia who lives with his family in the Albany area. He is not presently confined in an immigration jail. Instead, ICE has placed him under immigration supervision, requires him to report as directed, and has warned him that if he does not leave the United States on his own, he will be detained for removal.

2. That threat remains immediate. In July 2026, officers at ICE's Malta, New York office told Mr. Reyes Diaz that he needed to depart the United States or risk detention. In response to that command, he purchased a ticket from Albany to Colombia for September 30, 2026. After obtaining further legal advice and because he remains afraid to return to Colombia, he decided not to depart. His scheduled telephone check-in with ICE was on September 29, 2026; no telephone check-in is scheduled for September 30, 2026. Mr.

Reyes Diaz nevertheless continues to have no intention of boarding the September 30 flight, and ICE has never withdrawn its threat to detain him if he does not leave.

3. Mr. Reyes Diaz has substantial ongoing immigration matters. USCIS accepted his Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture on October 2, 2023; his younger daughter is a derivative applicant. USCIS has continued to treat that application as pending, including by accepting the annual asylum fee, and has granted Mr. Reyes Diaz employment authorization through July 24, 2030. His United States citizen wife also filed a new spousal Form I-130, which USCIS received on January 30, 2025 and which remains pending.

4. Mr. Reyes Diaz also has an old removal history that makes the source of any new detention authority especially important. He was ordered removed in 2005 and returned to Colombia, where he remained for well over ten years. When he returned to the United States in October 2022 with his minor daughter, the Department of Homeland Security ("DHS") apprehended them and then affirmatively paroled them into the United States under 8 U.S.C. § 1182(d)(5)(A). Mr. Reyes Diaz's parole expired in January 2023, yet DHS allowed him to remain at liberty under supervision for years while he complied with reporting requirements and pursued immigration relief.

5. If Respondents intend to treat the 2005 order as the basis for detention under 8 U.S.C. § 1231, a critical step is missing from the materials provided to Mr. Reyes Diaz and his counsel: no Form I-871 Notice of Intent/Decision to Reinstate Prior Order, and no other written reinstatement determination, has ever been provided to counsel or identified in the records presently available. Section 1231(a)(5) and 8 C.F.R. § 241.8 require an

immigration officer to make specified findings and provide written notice and an opportunity to contest reinstatement before a prior order may supply present reinstatement-based detention authority. *Garcia-Villeda v. Mukasey*, 531 F.3d 141, 149-50 (2d Cir. 2008).

6. If no reinstatement has occurred, Respondents cannot use § 1231 as a post hoc justification for an arrest. And if DHS instead seeks to make a new interior arrest while Mr. Reyes Diaz is living at liberty in New York, binding Second Circuit law and recent decisions of this Court hold that such detention falls under 8 U.S.C. § 1226(a), not § 1225(b), after a noncitizen has been released into and has lived in the United States for an extended period. *Barbosa da Cunha v. Freden*, 175 F.4th 61, 72-78, 86 (2d Cir. 2026); *Rodriguez Lazarte v. Venturella*, No. 9:26-CV-1534 (AJB), slip op. at 3-9 (N.D.N.Y. Sept. 1, 2026).
7. Recent decisions of this Court underscore the point. Judge D'Agostino has ordered that similarly situated noncitizens not be re-detained without adequate notice and a hearing at which the Government establishes § 1226(a) authority and proves danger or flight risk by clear and convincing evidence. *Vergel Gonzalez v. Rhoney*, Nos. 9:26-CV-1435, 9:26-CV-1436, 2026 WL 2327690, at *9-10 (N.D.N.Y. Aug. 12, 2026). Judge Nardacci has likewise required the Government to justify immigration detention by clear and convincing evidence at an individualized bond hearing. *Amin v. Venturella*, No. 9:26-CV-1520 (AMN), slip op. at 11-12 (N.D.N.Y. Aug. 28, 2026).
8. This Petition is deliberately narrow. Mr. Reyes Diaz does not ask this Court to vacate or review the validity of his 2005 removal order; to adjudicate his asylum or I-130 applications; to compel USCIS to approve either application; or to prevent DHS from

commencing, adjudicating, or lawfully executing immigration proceedings. He asks only that Respondents not extinguish his present liberty first and identify lawful authority later. Before ICE converts his existing supervised liberty into physical imprisonment, it must identify a lawful statutory basis and provide the process the Constitution and governing regulations require.

PARTIES

9. Petitioner Juan Camilo Reyes Diaz is a citizen of Colombia who resides in the Albany, New York area within the Northern District of New York. His Alien Registration Number is [redacted]. He is presently at liberty under ICE supervision and subject to ICE reporting requirements.

10. Respondent Peter Sukmanowski is the Acting Field Office Director of ICE's Buffalo Field Office and is sued solely in his official capacity. The Buffalo Field Office exercises authority over ICE supervision, arrests, detention decisions, and removal operations in the Albany area, including the Malta ERO sub-office to which Mr. Reyes Diaz has been directed to report.

11. Respondent David Venturella is the Acting Director of U.S. Immigration and Customs Enforcement and is sued solely in his official capacity. He exercises supervisory authority over ICE detention, supervision, and enforcement policy.

12. Respondent Markwayne Mullin is the Secretary of the United States Department of Homeland Security and is sued solely in his official capacity. He has ultimate responsibility for DHS and ICE.

13. Respondent Todd Blanche is the Acting United States Attorney General and is sued solely in his official capacity. Under Federal Rule of Civil Procedure 25(d), the successor to any public officer named here is automatically substituted.

JURISDICTION, CUSTODY, VENUE, AND RIPENESS

14. This Court has jurisdiction under 28 U.S.C. § 2241(c)(3) because Mr. Reyes Diaz is in immigration custody, within the meaning of the habeas statute, under restraints imposed by federal immigration authorities and faces imminent physical detention allegedly in violation of the Constitution and laws of the United States. The Court also has jurisdiction under 28 U.S.C. § 1331 over the federal questions presented and authority under 28 U.S.C. § 1651(a) to preserve the efficacy of the writ.

15. Physical incarceration is not required for habeas custody. The Supreme Court has long held that supervision imposing significant restraints on liberty that are not shared by the public generally constitutes custody. *Jones v. Cunningham*, 371 U.S. 236, 239-43 (1963). The Second Circuit likewise treats mandatory reporting, compelled appearances, and the possibility of arrest or revocation for noncompliance as sufficient restraints. *Nowakowski v. New York*, 835 F.3d 210, 216-17 (2d Cir. 2016).

16. Mr. Reyes Diaz is subject to just such restraints. ICE has placed him under an order of supervision, requires periodic reporting, directs when and how he must communicate with immigration officers, and has told him that failure to depart will result in detention. Those restraints are direct exercises of federal authority and carry the immediate possibility of arrest for noncompliance.

17. The threatened physical detention is also ripe. ICE did not make a generalized statement of possible future enforcement; officers specifically directed Mr. Reyes Diaz to depart

and told him he would risk detention if he did not. He purchased a September 30 flight in response. His scheduled telephone check-in with ICE was on September 29, 2026, and no telephone check-in is scheduled for September 30. He nevertheless continues to have no intention of boarding the flight or departing voluntarily. The threatened deprivation therefore turns on a decision he has already made, not a speculative future event.

18. Venue is proper in this District under 28 U.S.C. § 1391(e) because Mr. Reyes Diaz resides in the Albany area, is supervised by ICE personnel operating in this District, reports to the Malta ERO sub-office, and the threatened arrest and detention would occur in or be directed from this District.

19. Because Mr. Reyes Diaz is not presently in physical detention, there is no jail warden or other immediate physical custodian to name. Respondent Rhoney is the official responsible for the ICE field office exercising the present supervisory restraint and threatened detention authority over Mr. Reyes Diaz in this District. *Jones*, 371 U.S. at 243-44, confirms that habeas may proceed against supervisory officials who exercise the challenged custody even when the petitioner is not physically confined.

20. No administrative bond remedy is presently available before the threatened arrest. Mr. Reyes Diaz is not in an immigration jail and has not been placed in a bond proceeding. Requiring him to await arrest would make the deprivation complete before any administrative review could occur. Recent decisions of this Court have ordered pre-redetention safeguards precisely because a later bond process does not undo an unlawful seizure. See *Rodriguez Lazarte*, No. 9:26-CV-1534 (AJB), slip op. at 6-9; *Vergel Gonzalez*, 2026 WL 2327690, at *9-10.

21. The Petition presents legal and constitutional questions that do not require the Court to adjudicate removability or the merits of any immigration benefit. The central questions are whether ICE may convert the existing supervised liberty into physical detention without first identifying valid statutory authority and without the process required by the Fifth Amendment and governing regulations.

FACTUAL ALLEGATIONS

Mr. Reyes Diaz's Family and Prior Immigration History

22. Mr. Reyes Diaz was born in Colombia on [redacted]. He first came to the United States in 2002 on a B-1/B-2 visitor visa.

23. On December 20, 2002, Mr. Reyes Diaz married Cruz Esther Colon in Albany, New York. Ms. Colon is a United States citizen. They remain married.

24. Mr. Reyes Diaz and his wife have a United States citizen daughter who was born in Puerto Rico. He is also the father of a younger daughter, a citizen of Colombia, whom he raised after her mother abandoned her in Colombia.

25. During his earlier period in the United States, Mr. Reyes Diaz was convicted in New York of Offering a False Instrument for Filing in the Second Degree under New York Penal Law § 175.30. He was ordered removed on February 11, 2005.

26. Mr. Reyes Diaz complied with that removal order and returned to Colombia. He remained outside the United States for well over ten years.

27. During the years he was outside the United States, his United States citizen wife previously filed a Form I-130 on his behalf. Upon information and belief, that earlier petition was approved, although it did not ultimately result in his return as an immigrant.

The 2022 Entry, Humanitarian Parole, and Continuing Supervision

28. Mr. Reyes Diaz later experienced persecution in Colombia. In 2022, he fled with his younger daughter, then a minor, and traveled to the United States seeking protection.

29. On October 28, 2022, Mr. Reyes Diaz and his daughter were encountered by DHS at the United States border. DHS detained them initially and then released them into the United States on humanitarian parole under 8 U.S.C. § 1182(d)(5)(A).

30. Mr. Reyes Diaz's DHS records identify Alien Registration Number [redacted] and document that he was paroled on October 31, 2022 until January 3, 2023. His Form I-385 and Form G-56 directed him to report to ICE after release.

31. After release, Mr. Reyes Diaz came to the Albany area and reunited with his United States citizen wife and older daughter. His younger daughter remained with him.

32. Mr. Reyes Diaz's parole later expired. Rather than detaining him, DHS continued to supervise him in the community. He has remained subject to an ICE order of supervision and periodic reporting requirements and has appeared or reported as directed.

33. The materials presently available to counsel disclose no new criminal conviction since Mr. Reyes Diaz returned to the United States in 2022. ICE has identified no violation of his reporting conditions to counsel.

Pending Asylum and Family-Based Immigration Matters

34. On October 2, 2023, USCIS received Mr. Reyes Diaz's Form I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture. USCIS assigned receipt number [redacted]. His younger daughter is listed as a derivative applicant.

35. Mr. Reyes Diaz completed biometrics in Albany in November 2023. USCIS later accepted the annual asylum fee associated with the same I-589 receipt number, further documenting that the application remains pending in the agency's system.
36. USCIS granted Mr. Reyes Diaz employment authorization in classification C08. His current employment authorization is valid from July 25, 2025 through July 24, 2030.
37. Mr. Reyes Diaz's United States citizen wife filed a new Form I-130, Petition for Alien Relative, on his behalf. USCIS received the petition on January 30, 2025, assigned receipt number [redacted], and identified Mr. Reyes Diaz as the husband of a United States citizen. That petition remains pending.
38. The existence of these pending applications does not itself decide the statutory source of detention, and Mr. Reyes Diaz does not ask this Court to adjudicate them. They do, however, demonstrate that he is actively pursuing immigration relief through the processes DHS and USCIS have made available to him, rather than evading those processes.
39. Mr. Reyes Diaz is also the primary source of support and care for his younger daughter, who is a derivative on his asylum application and who has separately been placed into immigration-court proceedings after turning eighteen. His detention would immediately disrupt the family's ability to pursue their pending matters.

ICE's 2026 Demand that Mr. Reyes Diaz Depart and the Imminent Threat of Detention

40. On or about April 16, 2026, ICE directed Mr. Reyes Diaz to appear at the Malta, New York ERO office. He complied. ICE later directed him to return with his younger daughter after she turned eighteen.

41. Mr. Reyes Diaz's daughter turned eighteen on [redacted]. She subsequently appeared at the Malta ERO office, was served with a Notice to Appear, and has appeared in immigration court. Her proceedings remain pending.

42. Mr. Reyes Diaz's July 2026 ICE reporting date was ultimately rescheduled to July 23, 2026. Shortly before that date, on or about July 21, 2026, ICE told him that he needed to depart the United States or risk detention.

43. Mr. Reyes Diaz understood that command literally. To avoid being jailed, he purchased a flight from Albany, New York to Colombia for September 30, 2026.

44. Mr. Reyes Diaz later obtained additional legal advice concerning his pending protection claim, family petition, and detention rights. He remains afraid to return to Colombia and has decided that he will not voluntarily depart while those pending matters remain unresolved.

45. Mr. Reyes Diaz's scheduled telephone check-in with ICE was on September 29, 2026. There is no telephone check-in scheduled for September 30, 2026. ICE has not rescinded the warning that he will be detained if he does not depart, and Mr. Reyes Diaz continues to have no intention of boarding the September 30 flight.

46. Mr. Reyes Diaz has not absconded. He remains at his known Albany-area residence, is represented by counsel, and is continuing to comply with ICE reporting while seeking judicial protection before physical detention occurs.

47. The timing makes ordinary post-arrest litigation inadequate. Once ICE arrests Mr. Reyes Diaz, it may transfer him far from this District before counsel can obtain meaningful review. The object of this Petition is to require lawful authority and constitutionally adequate process before that deprivation occurs.

No Reinstatement Order Has Been Provided or Identified

48. The 2005 removal order was executed when Mr. Reyes Diaz returned to Colombia. His present physical presence in the United States therefore follows a later 2022 entry and DHS's decision to parole him into the country.

49. Counsel has reviewed the immigration records presently provided for this filing. Those records include Mr. Reyes Diaz's 2022 booking and reporting documents, parole documentation, asylum receipts, employment authorization approval, and I-130 receipt. They do not include a Form I-871 Notice of Intent/Decision to Reinstate Prior Order.

50. Neither Mr. Reyes Diaz nor counsel has been provided a written reinstatement determination identifying the findings required by 8 C.F.R. § 241.8, advising him of a right to contest those findings, or documenting that the 2005 order has been reinstated for his 2022 return.

51. Accordingly, on the record presently known to Petitioner, Respondents cannot simply assume that § 1231 detention authority already exists. If Respondents contend otherwise, the relevant reinstatement record can and should be produced before any arrest is carried out.

LEGAL FRAMEWORK

52. The writ of habeas corpus extends to a person who is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Custody includes substantial governmental restraints short of incarceration. *Jones*, 371 U.S. at 239-43; *Nowakowski*, 835 F.3d at 216-17.

53. The Fifth Amendment protects noncitizens from unlawful civil imprisonment. "Freedom from imprisonment—from government custody, detention, or other forms of physical

restraint—lies at the heart" of the liberty protected by due process. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). The Second Circuit applies the *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), framework to immigration detention. *Velasco Lopez v. Decker*, 978 F.3d 842, 850-56 (2d Cir. 2020); *Black v. Decker*, 103 F.4th 133, 142-51 (2d Cir. 2024).

54. Section 1226(a) supplies pre-final-order detention authority in the interior of the United States. It states that, "[o]n a warrant issued by the Attorney General," a noncitizen may be arrested and detained pending a decision on removal, and it expressly authorizes release on bond or conditional parole. 8 U.S.C. § 1226(a).

55. In *Barbosa da Cunha*, the Second Circuit rejected the Government's position that § 1225(b)(2)(A) authorizes mandatory detention of a noncitizen who is already living in the interior and is not then seeking admission. 175 F.4th at 72-78. The Court explained that once a person has entered the country and is living here, the legal circumstance changes; § 1226(a), not § 1225(b), governs the later interior detention. *Id.* at 86.

56. This Court has repeatedly applied *Barbosa da Cunha* to people initially encountered at the border, paroled under § 1182(d)(5)(A), and then re-arrested in the interior after living at liberty. See *Rodriguez Lazarte*, No. 9:26-CV-1534 (AJB), slip op. at 3-5; *Vergel Gonzalez*, 2026 WL 2327690, at *7-9; *Parra v. Ball*, No. 9:26-CV-1162 (MAD), 2026 WL 1960934, at *4-6 (N.D.N.Y. June 30, 2026).

57. When § 1226(a) governs, recent Northern District decisions have required individualized process before renewed detention after a period of liberty. *Rodriguez Lazarte* held that due process required an individualized determination before a previously paroled asylum applicant was returned to custody, and barred re-detention without adequate notice and a hearing where the Government must establish § 1226(a) authority and prove danger or

flight risk by clear and convincing evidence. No. 9:26-CV-1534 (AJB), slip op. at 6-9. *Vergel Gonzalez* imposed materially the same prospective protection. 2026 WL 2327690, at *9-10.

58. A different framework applies only if DHS has lawfully reinstated the old removal order. Under 8 U.S.C. § 1231(a)(5), a prior order may be reinstated if DHS "finds that" a noncitizen has illegally reentered after having been removed. The implementing regulation, 8 C.F.R. § 241.8, requires an officer to obtain the prior order, determine identity, determine whether the reentry was unlawful, consider relevant evidence, and provide written notice of the determination and an opportunity to make a written or oral statement contesting it.

59. The Second Circuit has emphasized that those requirements are meaningful procedural safeguards, particularly because reinstatement ordinarily occurs without a hearing before an immigration judge. *Garcia-Villeda*, 531 F.3d at 149-50.

60. Recent cases in this Circuit hold that § 1231 cannot justify an arrest first and a reinstatement determination later. In *Martin v. Joyce*, No. 26 Civ. 4699 (AT), slip op. at 5-8 (S.D.N.Y. July 30, 2026), the court held that a Form I-871 issued after the arrest could not retroactively supply § 1231 authority and ordered release. See also *Cartagena Jaco v. Blanche*, No. 26 Civ. 4798, 2026 WL 1786007, at *2-4 (S.D.N.Y. June 22, 2026); *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 363-68 (S.D.N.Y. 2019).

61. Finally, where ICE has already released a person under an Order of Supervision, revocation of that liberty interest must comport with applicable regulations and due process. *D.J.R.R. v. Genalo*, No. 26-CV-3124 (AMD), slip op. at 8-14, 18-19 (E.D.N.Y. June 17, 2026), ordered a petitioner released to his preexisting supervision and prohibited

renewed detention without adequate notice of the reasons for revocation and a meaningful opportunity to be heard.

62. This Petition challenges the statutory and procedural framework for threatened detention, not the validity of Mr. Reyes Diaz's old removal order or the merits of any removal case. The Second Circuit recently distinguished such "detention-specific" claims from claims that merely repackage an attack on removability. *Mahdawi v. Trump*, No. 25-1113, slip op. at 27 n.14 (2d Cir. July 21, 2026). A challenge to the statutory framework permitting detention without bail remains detention-specific; a challenge to the basis for removal itself does not. *Id.*

63. Mr. Reyes Diaz therefore confines his claims to whether Respondents may physically detain him now, what statutory provision could authorize that detention, and what process must precede it. The Court can grant that relief without deciding whether the 2005 order was valid, whether any future reinstatement would ultimately be sustained on petition for review, or whether USCIS should approve the pending I-589 or I-130.

GROUND ONE: THE FIFTH AMENDMENT REQUIRES A PRE-DEPRIVATION OPPORTUNITY TO CONTEST THE THREATENED DETENTION

64. Mr. Reyes Diaz incorporates the preceding allegations.

65. The private interest is the most basic one protected by due process: continued freedom from civil imprisonment. *Zadvydas*, 533 U.S. at 690; *Velasco Lopez*, 978 F.3d at 850-51. The threatened arrest would separate Mr. Reyes Diaz from his wife and daughters, interrupt his pending immigration matters, and expose him to rapid transfer outside the Capital Region.

66. That liberty interest is heightened by the years Mr. Reyes Diaz has already spent at liberty under DHS supervision. DHS chose to parole him in October 2022, allowed him to remain in the community after parole expired, issued employment authorization, accepted continuing asylum filings and fees, and required reporting rather than incarceration.

67. The risk of erroneous deprivation is substantial. ICE has threatened detention without identifying to counsel whether it relies on § 1231, § 1226(a), § 1225(b), a Form I-205, a Form I-200, a reinstatement decision, or some other asserted authority. Without advance notice and a neutral opportunity to test that authority, Mr. Reyes Diaz cannot know the legal basis on which his physical liberty would be taken.

68. The risk is not hypothetical. The records presently available contain no Form I-871 or other reinstatement determination, while recent cases show that ICE has repeatedly attempted to issue reinstatement or arrest paperwork only after taking a person into custody. See *Martin*, No. 26 Civ. 4699 (AT), slip op. at 5-8; *Vergel Gonzalez*, 2026 WL 2327690, at *9.

69. A pre-deprivation determination would have substantial value. It would identify the actual detention statute, require Respondents to produce any asserted warrant or reinstatement decision, and—if § 1226(a) governs—permit a neutral decisionmaker to determine whether detention is necessary at all.

70. The Government's burden is modest. Mr. Reyes Diaz is already reporting to ICE and remains at a known address with counsel, family, work authorization, and pending agency matters. Respondents can give notice and obtain an expedited determination without sacrificing any legitimate enforcement interest.

71. Recent decisions from this Court have already balanced these same interests and required notice and an individualized hearing before re-detention. *Rodriguez Lazarte*, No. 9:26-CV-1534 (AJB), slip op. at 6-9; *Vergel Gonzalez*, 2026 WL 2327690, at *9-10; *Parra*, 2026 WL 1960934, at *4-6.

72. Accordingly, taking Mr. Reyes Diaz into physical immigration custody without adequate notice of the legal and factual basis and a meaningful opportunity to contest that basis would violate the Fifth Amendment.

GROUND TWO: SECTION 1231 CANNOT SUPPLY PRESENT DETENTION AUTHORITY UNLESS DHS HAS FIRST LAWFULLY REINSTATED THE 2005 ORDER

73. Mr. Reyes Diaz incorporates the preceding allegations.

74. The fact that Mr. Reyes Diaz was removed in 2005 does not itself answer what statute governs detention after his later 2022 return and humanitarian parole. Section 1231(a)(5) makes reinstatement turn on a new agency finding that the person reentered illegally after removal.

75. Section 241.8 specifies what DHS must do to make that finding. The officer must obtain the prior order, establish identity, determine whether the later reentry was unlawful, consider the noncitizen's evidence, and provide written notice and an opportunity to contest the determination. 8 C.F.R. § 241.8(a)-(b). If the person expresses fear of return, the regulation also provides a fear-screening process. 8 C.F.R. § 241.8(e).

76. Those requirements matter here. Mr. Reyes Diaz returned with his minor daughter in 2022, was encountered by DHS, and was affirmatively paroled under § 1182(d)(5)(A). He also has a pending I-589 asserting fear of persecution in Colombia. Whether and how

§ 1231(a)(5) applies to that later entry is not a determination ICE may silently presume after arrest.

77. No Form I-871 has been provided to Mr. Reyes Diaz or counsel. The records presently available do not show that DHS made the § 241.8 determinations or gave Mr. Reyes Diaz the written notice and opportunity to respond that *Garcia-Villeda* identifies as the safeguards of the reinstatement process. 531 F.3d at 149-50.

78. If Respondents possess a valid reinstatement determination that predates the threatened arrest, they can produce it now. If they do not, they cannot arrest Mr. Reyes Diaz first and attempt to create the § 1231 predicate afterward. *Martin*, No. 26 Civ. 4699 (AT), slip op. at 5-8; *Cartagena Jaco*, 2026 WL 1786007, at *2-4.

79. A post-arrest I-871 would not cure an unlawful initial seizure. As *Martin* explained, allowing that sequence would permit ICE to arrest based on suspicion and seek statutory confirmation only after liberty has already been taken. No. 26 Civ. 4699 (AT), slip op. at 7-8.

80. The Court should therefore enjoin Respondents from relying on § 1231 to detain Mr. Reyes Diaz unless and until they demonstrate that the prerequisites to reinstatement were completed before detention and in compliance with 8 C.F.R. § 241.8.

GROUND THREE: ABSENT A LAWFULLY REINSTATED ORDER, ANY NEW INTERIOR DETENTION IS GOVERNED BY § 1226(a), NOT § 1225(b)

81. Mr. Reyes Diaz incorporates the preceding allegations.

82. If § 1231 does not presently govern, Respondents may not avoid ordinary pre-final-order detention rules by characterizing Mr. Reyes Diaz as still detained at the border under §

1225(b). He was released into the United States in 2022, moved to Albany, and has lived here under government supervision for nearly four years.

83. Binding Second Circuit law now holds that § 1225(b)(2)(A) does not govern a later interior detention of a noncitizen who is no longer seeking admission at the border. *Barbosa da Cunha*, 175 F.4th at 72-78. The applicable provision is § 1226(a). *Id.*

84. The fact that DHS initially released Mr. Reyes Diaz on humanitarian parole does not alter that rule. *Rodriguez Lazarte* involved a Bolivian asylum applicant who had presented at a port of entry, was paroled under § 1182(d)(5)(A), lived in Albany, and was later re-arrested after parole expired. This Court held that § 1226(a), not § 1225(b), governed the later arrest. No. 9:26-CV-1534 (AJB), slip op. at 3-5.

85. Judge D'Agostino reached the same result in *Vergel Gonzalez*, including for petitioners who had been paroled after border encounters and later arrested when reporting to ICE in Albany. 2026 WL 2327690, at *7-9. The court ordered release and prohibited re-detention without notice and a hearing at which the Government must establish § 1226(a) authority and prove danger or flight risk by clear and convincing evidence. *Id.* at *9-10.

86. Section 1226(a) also expressly contemplates arrest "on a warrant." Any future detention under that statute must therefore rest on a lawfully issued warrant or a valid statutory exception to the warrant requirement—not paperwork generated after Mr. Reyes Diaz is already in custody.

87. Mr. Reyes Diaz's history gives Respondents no obvious basis to dispense with individualized process. He has reported as instructed, lives with his family at a known address, is represented by counsel, holds work authorization through 2030, and has pending immigration matters. He continues to have no intention of taking the September

30 flight because he seeks to continue pursuing those matters and fears return to Colombia - not because he intends to evade the Government.

88. Under *Mathews*, *Velasco Lopez*, and the recent decisions of this Court, Respondents should be required to establish before detention that § 1226(a) actually authorizes the proposed custody and that detention is necessary because Mr. Reyes Diaz poses a danger or flight risk that cannot be adequately addressed through continued supervision or other less restrictive conditions.

GROUND FOUR: RESPONDENTS MAY NOT REVOKE PETITIONER'S EXISTING SUPERVISED LIBERTY WITHOUT DUE PROCESS

89. Mr. Reyes Diaz incorporates the preceding allegations.

90. ICE has not kept Mr. Reyes Diaz wholly free from restraint. It has placed him under an Order of Supervision and required him to report. Those conditions establish habeas custody, but they also establish an existing state of supervised liberty that ICE has maintained for years.

91. An agency's discretion to revoke supervision does not eliminate procedural protections when the consequence is physical imprisonment. In *D.J.R.R. v. Genalo*, the Eastern District of New York rejected the Government's argument that an Order of Supervision was merely a revocable grace with no protected liberty component. No. 26-CV-3124 (AMD), slip op. at 8-14.

92. The court held that ICE was required to follow its own revocation regulations and the Due Process Clause, ordered the petitioner released to his preexisting Order of Supervision, and prohibited future re-detention without adequate notice of the reasons for revocation and a meaningful opportunity to be heard. *Id.* at 18-19.

93. The same principle applies here. Respondents have identified no violation of Mr. Reyes Diaz's supervision conditions, no new criminal conduct, and no changed circumstance establishing that the community supervision DHS has used since 2022 is suddenly inadequate.

94. If ICE intends to revoke Mr. Reyes Diaz's supervised release because he will not voluntarily depart, it must at minimum comply with all applicable revocation regulations, make any findings those regulations require, give adequate notice of the reasons for revocation, and afford a meaningful opportunity to respond before converting supervision into imprisonment, absent a genuinely exigent circumstance recognized by law.

95. The Government may continue reasonable supervision while immigration matters are adjudicated. What it may not do is use a routine reporting obligation as a mechanism for surprise detention without the legal and procedural predicates required for that deprivation.

GROUND FIVE: THE INA'S JURISDICTIONAL PROVISIONS DO NOT BAR THIS DETENTION-SPECIFIC HABEAS CLAIM

96. Mr. Reyes Diaz incorporates the preceding allegations.

97. This Petition does not seek review of the 2005 removal order. It assumes that the order exists and does not ask this Court to reopen, vacate, or declare it invalid.

98. Nor does Mr. Reyes Diaz ask the Court to determine whether the 2005 order should eventually be reinstated, whether he is ultimately removable, whether he merits asylum or other protection, or whether the pending I-130 should be approved. Those questions remain for the agencies and, where Congress provides, the court of appeals.

99. The present claims are instead detention-specific: what statute authorizes physical custody today; whether the Government has completed the statutory predicate on which it proposes to rely; whether an interior arrest is governed by § 1226(a) rather than § 1225(b); and what process must precede imprisonment after years of supervised liberty.

100. The Second Circuit's recent decision in *Mahdawi* confirms the distinction. Although § 1252(b)(9) channels claims that attack the Government's very basis for removal, the court recognized that claims challenging the statutory framework for detention without bail are detention-specific and fall outside that jurisdictional channel. No. 25-1113, slip op. at 27 n.14.

101. Section 1252(g) is likewise narrow and does not generally preclude review of the legality of immigration detention. See *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025). *D.J.R.R.* applied that rule to a challenge to revocation of an Order of Supervision and re-detention. No. 26-CV-3124 (AMD), slip op. at 6-8.

102. Complete relief can therefore be granted without interfering with the removal process. The Court can require Respondents to use lawful detention authority and constitutionally adequate procedures while leaving every question of ultimate removability and immigration relief untouched.

GROUND SIX: IF RESPONDENTS DETAIN PETITIONER BEFORE THE COURT ACTS, THE COURT SHOULD PRESERVE ITS JURISDICTION AND ORDER HIS RETURN TO SUPERVISION

103. Mr. Reyes Diaz incorporates the preceding allegations.

104. Habeas is a remedy for unlawful executive custody, and release is the ordinary remedy when the custody was imposed without lawful authority. *Munaf v. Geren*, 553

U.S. 674, 693 (2008). Recent cases have ordered release where ICE arrested first and attempted to establish detention authority later. *Martin*, No. 26 Civ. 4699 (AT), slip op. at 8-9.

105. If ICE detains Mr. Reyes Diaz after this Petition is filed but before the Court can enter interim relief, the Court should order him returned to the existing conditions of supervision unless Respondents demonstrate lawful detention authority and constitutionally adequate process.

106. The Court should also prohibit transfer outside the Northern District while the legality of that detention is being adjudicated. A transfer cannot defeat habeas jurisdiction once properly invoked, and the All Writs Act authorizes orders necessary to preserve meaningful review. *Ex parte Endo*, 323 U.S. 283, 306 (1944); 28 U.S.C. § 1651(a).

107. A temporary no-transfer order would not prevent DHS from litigating any immigration matter, continuing supervision, producing a valid warrant or reinstatement record, or taking lawful action after constitutionally adequate process. It would simply prevent physical transfer from outrunning judicial review.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

108. Assume jurisdiction and issue an immediate Order to Show Cause directing Respondents to identify the statutory and documentary basis on which they contend Mr. Reyes Diaz may presently be arrested and detained;

109. Pending expedited adjudication, enjoin Respondents and all persons acting in concert with them from arresting or physically detaining Mr. Reyes Diaz based solely on

his decision not to board the September 30, 2026 flight or to depart voluntarily, absent further order of this Court;

110. Declare that Respondents may not rely on 8 U.S.C. § 1231 as the basis for physical detention unless they demonstrate that the prior removal order was lawfully reinstated before detention in compliance with 8 U.S.C. § 1231(a)(5) and 8 C.F.R. § 241.8;

111. In the absence of a lawfully reinstated order, declare that any new interior detention of Mr. Reyes Diaz pending immigration proceedings is governed by 8 U.S.C. § 1226(a), rather than 8 U.S.C. § 1225(b), consistent with *Barbosa da Cunha* and the recent decisions of this Court;

112. Enjoin Respondents from revoking Mr. Reyes Diaz's existing supervised liberty and taking him into physical immigration custody without adequate notice of the legal and factual basis for detention and a constitutionally adequate opportunity to be heard before a neutral decisionmaker;

113. If § 1226(a) is the asserted detention authority, require that before physical detention Respondents demonstrate that the arrest is lawfully authorized and, at an individualized hearing, prove by clear and convincing evidence that Mr. Reyes Diaz is a danger to the community or a flight risk that cannot be adequately mitigated by continued supervision or other less restrictive conditions;

114. If ICE detains Mr. Reyes Diaz before the Court can act, issue the writ directing his immediate release to the preexisting conditions of supervision or, at minimum, an immediate hearing in this District satisfying the foregoing requirements;

115. If ICE detains Mr. Reyes Diaz before the Court can act, enjoin Respondents from transferring him outside the Northern District of New York pending adjudication of this Petition without advance notice to counsel and leave of Court;

116. Make clear that nothing in the requested relief prevents Respondents from continuing reasonable supervision, litigating any immigration proceeding, adjudicating the pending I-589 and I-130 through the appropriate agencies, or undertaking future detention or removal action that rests on lawful authority and constitutionally adequate process;

117. Award reasonable costs and attorney's fees to the extent authorized by law; and

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

Dated: September 30, 2026

Respectfully submitted,
/s/ Matthew K. Borowski
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VERIFICATION BY COUNSEL PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner Juan Camilo Reyes Diaz and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge, based on information supplied by Petitioner and the immigration records reviewed by counsel, and that allegations stated on information and belief are believed to be true.

Dated: September 30, 2026

/s/ Matthew K. Borowski
Matthew K. Borowski
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EXHIBIT INDEX

Exhibit A: Certified Transcript of Marriage of Juan C. Reyes Diaz and Cruz Esther Colon

Exhibit B: Puerto Rico Birth Certificate of Petitioner's United States citizen daughter

Exhibit C: Petitioner's Form I-385, Form G-56, and Form I-94 / parole documentation from October 2022

Exhibit D: Form I-589 Receipt Notice and biometrics documentation (Receipt No. [redacted])

Exhibit E: Annual Asylum Fee Receipt and Employment Authorization approval through July 24, 2030

Exhibit F: Form I-130 Receipt Notice (Receipt No. [redacted]; received January 30, 2025)

Exhibit G: Petitioner declaration describing the July 2026 departure demand, September 29 ICE telephone check-in, and September 30 flight