[redacted]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

MAZHAR YOUSAF,

Petitioner,

v.

DAVID VENTURELLA, in his official capacity as Acting Director of the Immigration and Customs Enforcement;

MARKWAYNE MULLIN, in his official capacity as Secretary of the Department of Homeland Security;

TODD BLANCHE, in his official capacity as Acting Attorney General of the United States;

PHILIP RHONEY, in his capacity as Acting Field Office Director, Buffalo Field Office, Immigration and Customs Enforcement;

Respondents.

Case No. 9:26-cv-2094 (ECC)

VERIFIED PETITION FOR AN EMERGENCY WRIT OF HABEAS CORPUS

INTRODUCTION

1. Petitioner Mazhar Yousaf, a national of Pakistan, was detained in an apparently warrantless arrest on October 10, 2026, in Amsterdam, New York. He faces unlawful detention.

2. Petitioner is charged with, inter alia, having entered the United States without admission or inspection. *See* 8 U.S.C. § 1182(a)(6)(A)(i).

3. On September 5, 2025, the Board of Immigration Appeals ("BIA" or "Board") issued a precedent decision, binding on all immigration judges, holding that an immigration judge has no authority to consider bond requests for any person who entered the United States without admission. *See Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025). The Board determined that such individuals are subject to detention under 8 U.S.C. § 1225(b)(2)(A) and therefore ineligible to be released on bond.

4. As was made clear on April 28, 2026 by the Second Circuit Court of Appeals in *Da Cunha v. Freden*, 2026 US App. LEXIS 12201 (2nd Cir. 2026), Petitioner's detention on this basis violates the plain language of the Immigration and Nationality Act. The *Da Cunha* Court also found that detention pursuant to 1225(b)(2)(A) in these circumstances violates the law based on the statutory context, statutory history and purpose, and three decades of practice, as well as raising very important due process considerations.

5. Thus it is clear that Petitioner's confinement is unlawful, and he brings this petition seeking immediate and unconditional release. He also asks this Court to enjoin his transfer outside this District. *Ozturk v. Hyde*, 136 F.4th 382, 394-396 (2nd Cir. 2025) (requiring petitioner to be returned to where she was when detained); *Khalil v. Joyce*, No. 2:25-cv-1963 (MEF) (D.N.J.) Mar. 19, 2025), ECF No. 81 (enjoining transfer and removal of an immigration habeas petitioner under the All Writs Act). Alternatively, Petitioner respectfully asks the Court to issue an order to show cause and hold a hearing pursuant to 28 U.S.C. § 2243 on the expedited

basis set forth in the statute, during which the Court should (1) find that their detention violates federal law and (2) order release or order burden-shifted bond hearings.

JURISDICTION

6. This action arises under the Constitution of the United States and the INA, 8 U.S.C § 1101 *et seq*.

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); and 28 U.S.C § 1331 (federal question jurisdiction).

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

VENUE

9. Venue is proper in the Northern District of New York because, upon information and belief, Petitioner is currently physically detained by Respondents in the Amsterdam or Malta, New York area, which is located in this district. *See Rumsfeld v. Padilla*, 542 U.S. 426, 428 (2004) ("[T]he traditional rule has always been that habeas relief is issuable only in the district of confinement...").

PARTIES

10. Petitioner Mazhar Yousaf a national of Venezuela, was detained in an apparently warrantless arrest on October 10, 2026, in Albany, New York, and is in Respondents' custody.

11. Respondent David Venturella is the Acting Director of the DHS ICE. As such, he is responsible for Petitioner's detention and removal. He is sued in his official capacity.

12. Respondent Markwayne Mullin is the Secretary of the DHS. He is responsible for the implementation and enforcement of the INA and oversees ICE, which is responsible for Petitioner's present DHS detention. Mr. Mullin has ultimate custodial authority over Petitioner and is sued in his official capacity. Respondent DHS is the federal agency responsible for implementing and enforcing the INA, including the detention and removal of noncitizens.

13. Respondent Todd Blanche is the Attorney General of the United States. He is responsible for the Department of Justice, of which the Executive Office for Immigration Review ("EOIR") and the immigration court system it operates is a component agency. He is sued in his official capacity. Respondent EOIR is the federal agency responsible for implementing and enforcing the INA in removal proceedings, including for custody redeterminations in bond hearings.

14. Respondent Philip Rhoney is the Acting Field Office Director of the Buffalo Ice Field Office. He is sued in his official capacity.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

15. Petitioner Mazhar Yousaf, a national of Pakistan, was detained in an apparently warrantless arrest on October 10, 2026, in Amsterdam, New York. Petitioner entered the United States in December, 2024 on a B2 visa. (Exhibit A) He subsequently applied for asylum. (Exhibit B)

16. Petitioner was detained in an apparently warrantless arrest on October 10, 2026, in Amsterdam, New York. There was no removal case pending at the time of his arrest. (Exhibit C, EOIR page, checked 10/10/26)

LEGAL FRAMEWORK

Immigration Detention Framework

17. The INA prescribes three basic forms of detention for the vast majority of noncitizens in removal proceedings.

18. First, 8 U.S.C. § 1226 authorizes the detention of noncitizens in standard removal proceedings before an IJ. *See* 8 U.S.C. § 1229a. Individuals in § 1226(a) detention are generally entitled to a bond hearing at the outset of their detention, *see* 8 C.F.R. §§ 1003.19(a), 1236.1(d), while noncitizens who have been arrested, charged with, or convicted of certain crimes are subject to mandatory detention, *see* 8 U.S.C. § 1226(c).

19. Second, the INA provides for mandatory detention of noncitizens subject to expedited removal under 8 U.S.C. § 1225(b)(1) and for other recent arrivals seeking admission referred to under § 1225(b)(2).

20. Last, the INA also provides for detention of noncitizens who have been ordered removed, including individuals in withholding-only proceedings, *see* 8 U.S.C. § 1231(a)–(b).

21. This case concerns the detention provisions at §§ 1226(a) and 1225(b)(2).

22. Detention under Section 1226(a) is discretionary, not mandatory; the government "may release the [noncitizen] on—(A) a bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Attorney General; or (B) conditional parole[.]" 8 U.S.C.§ 1226(a)(2)(A)–(B).20.

23. Under the Section 1226 framework, release is appropriate where a noncitizen "demonstrate[s] to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding." 8 C.F.R. § 1236.1(c)(8). *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) ("8

U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination"); *see also Lopez Benitez v. Francis*, No. 25-CV-5937,2025 WL 2371588, at *20 (S.D.N.Y. Aug. 13, 2025). If, after an individualized consideration, ICE chooses to detain the noncitizen pursuant to Section 1226(a) pending removal proceedings, the individual may ask for a bond redetermination hearing before the immigration judge. 8 C.F.R. §1003.19.

24. In contrast with Section 1226, which applies to "certain [noncitizens] already in the country," *Jennings v. Rodriguez*, 583 U.S. 281, 289 (emphasis added), Section 1225(b) governs detention of noncitizens seeking entry into the United States (i.e., "applicants for admission"). In other words, Section 1225(b) mandates detention for those noncitizens subject to it, and they are not eligible to be considered for release.

25. Section 1225(b)(2)(A) applies to a narrower subset of applicants for admission. It provides that, "if the examining officer determines that a[] [noncitizen] *seeking admission* is not clearly and beyond a doubt entitled to be admitted, the [noncitizen] *shall be detained* for a proceeding under section 1229a of this title." 8 U.S.C. § 1225(b)(2)(A) (emphasis added).

26. For decades after the enactment of detention provisions at § 1226(a) and § 1225(b)(2), people who entered the country without inspection but who were already in the United States at the time of an ICE arrest were detained under § 1226(a) rather than § 1225(b)(2). *See* Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings; Asylum Procedures, 62 Fed. Reg. 10312, 10323 (Mar. 6, 1997). As the Supreme Court has made clear, "Section 1226(a) sets out the default rule: The Attorney General may issue a warrant for the arrest and detention of an [noncitizen] 'pending a decision on whether the [noncitizen] is to be removed from the United States.'" *Jennings*, 583 U.S. at 287-89.

27. On July 8, 2025, ICE, "in coordination with" DOJ, announced a new policy[1] that rejected well-established understanding of the statutory framework and reversed decades of practice. The policy claims that all persons who entered the United States without inspection shall now be subject to mandatory detention provision under § 1225(b)(2)(A), regardless of when a person is apprehended and affects those who have resided in the United States for months, years, and even decades.

28. On September 5, 2025, the BIA adopted this same position in a published decision, *Matter of Yajure Hurtado*. There, the Board held that all noncitizens who entered the United States without admission or parole are subject to detention under § 1225(b)(2)(A) and are ineligible for IJ bond hearings.

29. In addition to the Second Circuit's decision in *Da Cunha*, the vast majority of district courts that have confronted this issue have found that Section 1226(a) applies in these circumstances, and that the government's current position belies the text of the INA, canons of statutory interpretation, legislative history, and longstanding agency practice.

Noncitizens' Procedural Due Process Rights

30. The Due Process Clause of the Fifth Amendment entitles noncitizens to due process of law. *Reno v. Flores*, 507 U.S. 292, 306 (1993). As clearly enunciated by the Supreme Court, the protection of the Due Process Clause applies to noncitizens in the United States "whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas v. Davis,* 533 U.S. 678, 693 (2001) (citations omitted).

31. Stated simply, "while [DHS] might want to enforce this country's immigration

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

laws efficiently, it cannot do that at the expense of fairness and due process." *Ceesay v. Kurzdorfer*, 2025 WL 1284720, at *1 (WDNY 2025) (citing *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 266–68 (1954)).

32. Further, noncitizens are entitled to procedural due process protections, even in the face of policy shifts between administrations. While a "new administration can change the rules . . . it cannot change them and make up new rules as it goes along when the new rules abridge constitutional rights." *Velasquez v. Kurzdorfer*, 2025 WL 1953796, at *14 (WDNY 2025).

33. In the context of immigration detention due process claims, the Second Circuit has applied the three-factor balancing test set forth in *Mathews v. Eldridge* to determine what due process requires. These factors are: (i) "the private interest that will be affected by the official action"; (ii) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (iii) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

34. In light of a noncitizen's due process rights and the procedural rights conferred by Section 1226(a) and the implementing regulations, a decision to detain a noncitizen requires an individualized determination as to the noncitizen's risk of flight and danger to the community. *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 235 (SDNY 2020); *Lopez Benitez*, 2025 WL 2371588, at *10; *Kelly v. Almodovar*, 2025 WL 2381591, at *3 (SDNY 2025).

35. Under the *Mathews* rubric, freedom from imprisonment, physical restraint, or other forms of government custody is "the most elemental of liberty interests." *Hamdi v.*

Rumsfeld, 542 U.S. 507, 529 (2004); *Lopez Benitez*, 2025 WL 2371588, at *9 ("[Petitioner] invokes the most significant liberty interest there is—the interest in being free from imprisonment") (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020)) (citing *Hamdi*, 542 U.S. at 529); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (NDCA 2019) (noncitizens in immigration custody had an arguably even greater liberty interest in remaining out of detention than criminal parolees who required due process protection).

36. With respect to the second *Mathews* factor, given the strong liberty interest at stake, the Fifth Amendment's guarantee of due process requires at least some notice and an opportunity to be heard before a person can be placed in immigration detention. *Trump v. J.G.G.*, 604 U.S. 670, 673 (2025). Further, due process requires that "notice must be afforded within a reasonable time and in such manner as will allow [noncitizens] to actually seek . . . relief[.]" *Id.*

37. For the third *Mathews* factor, "the Attorney General's discretion to detain individuals under 8 U.S.C. § 1226(a) is valid where it advances a legitimate government purpose." *Velasco Lopez*, 978 F.3d at 854. The recognized government interests in immigration detention are "ensuring the appearance of [noncitizens] at future immigration proceedings" and "preventing danger to the community." *Zadvydas*, 533 U.S. at 690. Absent evidence in the record that a noncitizen is dangerous, and in situations when the noncitizen has appeared for immigration proceedings, district courts have held that the government cannot demonstrate a significant interest in their detention. *See Lopez Benitez*, 2025 WL 2371588, at *13; *Valdez*, 2025 WL 1707737, at *4 (SDNY 2025).

38. Recent decisions by federal courts in various jurisdictions confirm that due process requires the government to make individualized determinations to detain noncitizens and

give them notice and a meaningful opportunity to be heard when challenging their detention. Further, if a noncitizen does not receive individualized consideration pre-deprivation, his due process rights are irrevocably violated, and no amount of procedure provided post-detention can remedy that violation.

39. As a result, many courts have ordered a noncitizen's immediate release where their pre-detention due process rights have been violated. Here, immediate release is appropriate because Respondents have not—and cannot—show that they conducted an individualized determination regarding Petitioner before detaining him on October 10, 2026. *Cuy Comes v. DeLeon*, 2025 WL 3206491, at *6 (SDNY 2025) *Perez Velasquez v. Noem*, 2025 WL 3707526, at *4 (SDNY 2025); *Campos v. Deleon*, 2025 WL 3514120, at *2 (SDNY 2025) (collecting cases).

40. Respondents' reliance on Section 1225(b)(2)'s mandatory detention provision establishes their decision to forgo any evaluation of whether Petitioner's circumstances would otherwise warrant detention under Section 1226, which provides the sole lawful authority for detaining individuals residing in the U.S.

41. In the alternative, Petitioner seeks at a minimum a bond hearing at which Respondents bear the burden of justifying his continued detention by clear and convincing evidence. *See Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d Cir. 2020).

Warrantless Arrest in Violation of Fourth Amendment and INA

42. The Fourth Amendment bars arrest without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, 2025 WL 2581710, at *3–4 (DNM 2025) (finding habeas petitioner's Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination

before re-arresting and detaining noncitizen in removal proceedings).

43. Moreover, Section 1226(a) of the INA authorizes arrest and detention "[o]n a warrant issued by the Attorney General." The limited warrantless-arrest authority in 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) requires an individualized reason to believe both that the person is present in violation of immigration law and that the person is likely to escape before a warrant can be obtained.

44. The appropriate remedy for this violation is release from detention. The appropriate remedy for this violation is release from detention. *See, e.g., Rosado v. Figueroa,* 2025 US Dist. LEXIS 156344, at *51-53 (DAZ 2025), *report and recommendation adopted,* 2025 U.S. Dist. LEXIS 156336 (ordering habeas petitioner's "release from detention . . . granted because her Fourth Amendment rights were violated.").

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION:

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

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

46. Petitioner was, at the time of arrest and detention by Respondents, *not* "seeking admission" to the United States. He was already residing in the United States. Section 1226 governs the detention of individuals residing within the United States, like Petitioner, and implements a discretionary detention regime with the opportunity for release.

47. Because Petitioner was not "seeking admission," he is not lawfully detained under 8 U.S.C. § 1225(b)(2) and detention pursuant to that statute is *ultra vires* and not lawful.

48. Rather, the proper statutory interpretation of the INA, consistent with decades of

practice, is that an individual in Petitioner's circumstances who is placed into removal proceedings is detained under 8 U.S.C. § 1226(a.) Because Petitioner's detention should be governed by Section 1226, the application of the mandatory detention statute, 8 U.S.C. §1225(b), to Petitioner is unlawful under the Immigration and Nationality Act.

SECOND CAUSE OF ACTION:

ICE'S FAILURE TO EXERCISE ITS DISCRETION VIOLATES DUE PROCESS AND THE IMMIGRATION AND NATIONALITY ACT

U.S. CONST. AMEND. V; 8 U.S.C. § 1226(a)

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

50. Because Petitioner was detained by ICE under a discretionary statute, 8 U.S.C. § 1226(a), the agency was required to exercise its discretion in deciding whether or not to detain him. However, the agency failed to properly exercise its discretion.

51. In fact, by refusing to exercise any discretion at all in his case, ICE denied Petitioner the process that he was due, violating both the statute itself and the Due Process Clause of the Constitution.

THIRD CAUSE OF ACTION:

OF ACTION:

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

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

53. The Administrative Procedure Act prohibits agency action which is arbitrary and capricious or contrary to law. 5 U.S.C. § 706(2)(A).

54. ICE officers' authority to conduct warrantless arrests is prescribed in 8 U.S.C.

1357(a)(2). That statute requires that officers have "reason to believe" a person is in the U.S. in violation of laws *and* "is likely to escape before a warrant can be obtained for his arrest." That assessment must be individualized.

55. On information and belief, no individualized assessment of flight risk was conducted for Petitioner.

56. An action is an abuse of discretion 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)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 588 U.S. 752, 773 (2019) (citation omitted).

57. Respondents' decision to detain Petitioner and suddenly subject him to mandatory detention under Section 1225(b)(2) irrespective of his individual circumstances, is arbitrary and capricious and contrary to law.

FOURTH CAUSE OF ACTION

WARRANTLESS ARREST IN VIOLATION OF FOURTH AMENDMENT AND INA

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

59. The Fourth Amendment protects "the right of the people to be secure in their persons . . . against unreasonable searches and seizures" and establishes that "no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing . . .

the persons or things to be seized." U.S. Const. amend. IV.

60. Upon information and belief, Petitioner's detention lacked a proper basis. Petitioner's detention violates the Fourth Amendment because he was arrested without probable cause or a proper warrant. *See, e.g., Gamez Lira v. Noem*, No. 1:25-CV-00855, 2025 WL 2581710, at *3–4 (D.N.M. Sept. 5, 2025) (finding habeas petitioner's Fourth Amendment claim likely to succeed in showing arrest and continued detention unconstitutional when Respondents failed to make a probable cause determination before re-arresting and detaining noncitizen in removal proceedings).

61. In addition, Section 1226(a) of the INA authorizes arrest and detention "[o]n a warrant issued by the Attorney General." The limited warrantless-arrest authority in 8 U.S.C. § 1357(a)(2) and 8 C.F.R. § 287.8(c)(2) requires an individualized reason to believe both that the person is present in violation of immigration law and that the person is likely to escape before a warrant can be obtained. Upon information and belief, there was no valid warrant and no escape findings prior to Petitioner's arrest.

62. The appropriate remedy for this violation is release from detention. *See, e.g., See, e.g., Franco Loaeza v. Bausch,* No. 26-CV-00945-MAV, Dkt. 34 (WDNY July 27, 2026); *Labarca v. Bausch,* 2026 US Dist. LEXIS 182596 (WDNY August 14, 2026); *Last Name Unknown v. Ball*, No. 26-CV-1249-LJV, 2026 WL 2096666 (WDNY July 21, 2026); *Mejia Marcario v. Ball,* No. 1:26-cv-01798- LJV (WDNY August 31, 2026.)

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

a. Exercise jurisdiction over this matter;

b. Enjoin his removal or transfer outside the jurisdiction of this Court and the United States pending its adjudication of this petition;

c. Issue a writ of habeas corpus directing Respondents to immediately release Petitioner from custody without any additional restraints on his liberty (as occurred in *Mendez v. Field Off. Dir., United States Immigr. & Customs Enf't*, 2026 U.S. Dist. LEXIS 53260 (NDNY 2026.), and enjoining any re-detention without a change of circumstances;

d. In the alternative, the Court should conduct a constitutionally adequate, individualized bond hearing for Petitioner within fourteen days. If, instead, Respondents are ordered to carry out such a hearing in front of an impartial adjudicator, the Court should direct that at that hearing:

1. ICE must bear the burden of establishing by clear and convincing evidence that continued detention is justified;

2. The adjudicator must meaningfully consider alternatives to imprisonment such as release on recognizance, parole or electronic monitoring; and

3. The adjudicator must meaningfully consider Petitioner's ability to pay if setting a monetary bond.

e. Award Petitioner costs and reasonable attorneys' fees; and

f. Order such other relief as this Court may deem just and proper.

Dated: October 10, 2026

s/Kathy Manley
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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 have discussed the events herein with the Petitioner and/or his family member. Based on those discussions, 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: October 10, 2026

Respectfully submitted,

s/Kathy Manley
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