**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF NEW YORK**

Oscar BELGAL,

*Petitioner*,

v.

Kenneth GENALO, Director, New York Field Office, Immigration and Customs Enforcement; Raul MALDONADO, JR., Warden of Metropolitan Detention Center, Brooklyn; Markwayne MULLIN, Secretary of Homeland Security; Daren MARGOLIN, Director, Executive Office for Immigration Review; and Todd BLANCHE, Attorney General of the U.S.,

*Respondents.*

Case No. 1:26-cv-6607

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS**

## INTRODUCTION

1. This case is yet another challenging U.S. Immigration and Customs Enforcement's ("ICE") flagrant abuses of authority and categorically lawless conduct.

2. On October 8, 2026, Petitioner Oscar Belgal picked up his five-year-old son from school and, before heading home, stopped at McDonald's to get him an after-school snack. As they arrived home, Oscar realized that the street parking he had chosen was in front of a fire hydrant and began to pull out.

3. At that moment, an anonymous, masked man stormed Oscar's driver-side window with his firearm drawn, followed closely behind by several other masked men also wielding firearms. The men did not identify themselves, show any documents or otherwise communicate with Oscar in any substantive way.

4. Instead, without identifying himself, the first man struck and shattered Oscar's window and began firing a pistol into Oscar's car while his son cowered in the back seat. One of those bullets struck Oscar in the neck and he immediately began to bleed. Believing that his dad had been fatally shot, his son screamed hysterically that the masked men had killed his father.

5. Yet when Oscar got out of his vehicle to plead for help and medical assistance, the individuals provided no aid. Instead, they pinned him to the ground, handcuffed him, and left him slumped and semi-conscious. And still, even with Oscar in their custody, the individuals declined to identify themselves.

6. It wasn't until later, when Oscar woke up in the hospital with one of their bullets lodged in his neck, that the individuals would declare themselves as ICE officers.

7. And now, five days later, Oscar remains in ICE custody with the bullet ICE officers discharged still lodged in his neck. He has experienced a loss of sensation in half of his face, as well as hearing loss in his left ear, and has not received surgery to remove the bullet from his neck.

8. ICE's egregious actions violate fundamental principles of every legal structure that constrains its conduct and authority—the Constitution, the statutory and regulatory framework, and even its own internal policies.

9. Civil immigration detention is limited to narrow, nonpunitive circumstances and, as a basic prerequisite, must be related to pending immigration proceedings. Accordingly, the Immigration and Nationality Act ("INA") and its

implementing regulations set strict boundaries on ICE's arrest and detention authority.

10. Respondents have failed to meet the most elemental requirements for their arrest and detention authority, not even having charged Oscar as removable before arresting him. Respondents' detention of Oscar is therefore the very definition of "unlawful from [ ] inception," such that Oscar's immediate release is required. *Hernandez Lazo v. Noem*, 818 F.Supp.3d 328, 349 (E.D.N.Y. 2026).

11. And urgently, those defects were compounded by still more egregious and flagrant violations: Respondents' comprehensively illegal use of deadly force and their repeated failures to facilitate medical treatment for the severe harm they caused.

12. In light of the significant risk of imminent harm that he faces, and for the reasons articulated below, the Court should order Oscar's immediate release.

**PARTIES**

13. Petitioner OSCAR BELGAL[1] has been held in ICE custody since October 8, 2026. He is currently incarcerated at the Metropolitan Detention Center ("MDC") in Brooklyn, New York.

14. Respondent KENNETH GENALO is named in his official capacity as the Field Office Director of the New York Field Office for ICE within the Department of Homeland Security ("DHS" or "Department"). In this capacity, he is responsible for

[1] Though Respondents and other parties have variously referred to Petitioner as "Oscar Bergal" and "Oscar Bengal," Petitioner's true and correct name is Oscar Belgal.

the administration of immigration laws and the execution of detention and removal determinations.

15. Respondent RAUL MALDONADO, JR. is named in his official capacity as the Warden of MDC, where Petitioner is currently detained.

16. Respondent MARKWAYNE MULLIN is named in his official capacity as the Secretary of Homeland Security. He directs each of the component agencies within DHS, including ICE. He is responsible for the administration and enforcement of immigration laws pursuant to 8 U.S.C. § 1103(a) and has supervisory responsibilities for and authority over the detention and removal of noncitizens throughout the United States. Respondent Mullin is the ultimate legal custodian of Oscar.

17. Respondent DAREN MARGOLIN is named in his official capacity as the Director of the Executive Office for Immigration Review ("EOIR"). He is responsible for the policies and operations of the immigration courts.

18. Respondent TODD BLANCHE is named in his official capacity as the Attorney General of the United States. In this capacity, he is responsible for administration of immigration laws as exercised by EOIR pursuant to 8 U.S.C. § 1103(g). Respondent Blanche oversees the immigration court system, including all Immigration Judges and the Board of Immigration Appeals and is legally responsible for administering Oscar's removal and custody redetermination proceedings and the standards used in those proceedings.

## JURISDICTION AND VENUE

19. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 5 U.S.C. § 706 (Administrative Procedure Act ("APA")); 28 U.S.C. § 2201 (Declaratory Judgment); and 28 U.S.C. § 1651 (All Writs Act).

20. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See Velasco Lopez v. Decker*, 978 F.3d 842, 855 (2d Cir. 2020); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

21. Federal courts also have jurisdiction through the APA to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702.

1. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Oscar is presently in the custody of Respondents in this District at MDC, located at 80 29th Street, Brooklyn, NY 11232; his immigration proceedings are venued in New York City; the ICE office that controls the location of his detention is based in New York City, and a substantial part of the events giving rise to the claims

and relevant facts occurred in this district. *See* 28 U.S.C. §§ 1391, 2241(c), 2242, 2243.[2]

**REQUIREMENTS OF 28 U.S.C. § 2243**

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

23. Habeas corpus is "perhaps the most important writ known to the constitutional law . . . 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) (emphasis added). "The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application." *Yong v. I.N.S.*, 208 F.3d 1116, 1120 (9th Cir. 2000) (citation omitted).

**RELEVANT LEGAL FRAMEWORK**

24. "In our society liberty is the norm," and detention is the "carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987). "Freedom from imprisonment—from government custody, detention, or other forms of physical

[2] On October 8, 2026, Oscar submitted a petition for a writ of habeas corpus with the U.S. District Court for the Southern District of New York on an emergent basis. *See Bergal v. Genalo*, No. 1:26-cv-08928 (JPC) (S.D.N.Y. Oct. 8, 2026). Recognizing, with the benefit of more developed information, that Oscar had not been within that district at the time of filing, the parties to that action stipulated to voluntary dismissal without prejudice pursuant to Fed. R. Civ. Pro. 41(a)(1)(A)(ii). The Court so-ordered that stipulation on October 14, 2026.

restraint—lies at the heart of the liberty that [the Due Process] Clause protects." *Zadvydas*, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992)). The constitutional constraints on civil detention are even higher than in the criminal context. *See id.*; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) ("[C]ivil commitment for any purpose constitutes a significant deprivation of liberty[.]").

25. The Fourth Amendment "is designed to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals." *I.N.S. v. Delgado*, 466 U.S. 210, 215 (1984) (quoting *United States v. Martinez–Fuerte*, 428 U.S. 543, 554 (1976)) (internal quotation marks omitted).

26. It is well established that this right extends to noncitizens within the United States. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 271 (1990); *see also INS v. Lopez-Mendoza*, 468 U.S. 1032, 1046 (1984) (noting that it is "[i]mportant [ ] to protect the Fourth Amendment rights of all persons . . . ."); *see also Zuniga-Perez v. Sessions*, 897 F.3d 114, 122 (2d Cir. 2018) ("Fourth Amendment protections also extend to non-citizens.") (internal citations omitted).

27. Following the bounds of the Fourth Amendment, the INA provides that only "[o]n a warrant issued by the Attorney General, [may a noncitizen] be arrested and detained pending a decision on whether the [noncitizen] is to be removed from the United States." 8 U.S.C. § 1226(a).

28. Administrative warrants for civil immigration arrests are contained in Forms I-200. Officials' authority to issue Form I-200 administrative warrants "derives from 8 C.F.R. §§ 236.1(b) and 1236.1(b) or their predecessor regulation (8

C.F.R. § 242.2)." *Castañon Nava v. Dep't of Homeland Sec.*, 806 F.Supp.3d 823, 849 (N.D. Ill. 2025), *aff'd in part sub nom. Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828 (7th Cir. 2026). The two parallel regulations state:

> (b) Warrant of arrest—
>
> (1) In general. At the time of issuance of the notice to appear, or at any time thereafter and up to the time removal proceedings are completed, the respondent may be arrested and taken into custody under the authority of Form I-200, Warrant of Arrest. A warrant of arrest may be issued only by those immigration officers listed in § 287.5(e)(2) of 8 CFR chapter I and may be served only by those immigration officers listed in § 287.5(e)(3) of 8 CFR chapter I.

8 C.F.R. §§ 236.1(b), 1236.1(b).

29. Accordingly, and following the bounds of the Due Process clause, which requires that detention "bear[] [a] reasonable relation to the purpose for which the individual [was] committed," *i.e.* removal proceedings, *Zadvydas*, 533 U.S. at 690 (*quoting Jackson v. Indiana*, 406 U.S. 715, 738 (1972)), the Supreme Court has held that "the authority to issue these administrative warrants" arises only "at the commencement of any proceeding[s] . . . or at any time thereafter." *Abel v. United States*, 362 U.S. 217, 232 (1960). Immigration proceedings are commenced via the Form I-862 Notice to Appear ("NTA"). *See Vasquez Perez v. Decker*, No. 18-CV-10683 (AJN), 2019 WL 4784950, at *1 (S.D.N.Y. Sept. 30, 2019); *see also Garcia Lanza v. Noem*, 822 F.Supp.3d 326, 333 (E.D.N.Y. 2026) ("[T]he authority to issue administrative arrest warrants emanates from a pending removal proceeding[.]"); 8 C.F.R. § 1003.14 ("Jurisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service. – which is initiated by the issuance of an NTA . . . ."). Otherwise stated,

immigration officials only have authority to issue a Form I-200 administrative warrant for detention if removal proceedings have already formally commenced.

30. "Generally, officers making civil immigration arrests must have an administrative warrant. 'If no federal warrant has been issued, those officers have more limited authority.'" *Escobar Molina v. U.S. Dep't of Homeland Sec.*, 811 F.Supp.3d 1, 30 (D.D.C. 2025) (quoting *Arizona v. United States*, 567 U.S. 387 (2012)); *see also Garcia Lanza*, 822 F.Supp.3d at 332–33 (describing the use of administrative warrants as "authorized for use by immigration enforcement officers only under carefully proscribed circumstances. Those circumstances are extremely limited due to the extraordinary nature of this process – it allows arresting officers to issue their own warrants – a rare exception to the traditional practices in American law.").

31. Under the INA, an ICE officer may conduct a warrantless immigration arrest *only if* the officer "has reason to believe that (1) the [noncitizen] so arrested is in the United States in violation of any . . . law or regulation," **and** "(2) is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); *see also* 8 C.F.R. § 287.8(c)(2)(i)-(ii) (providing that "an arrest shall be made only when the designated immigration officer has reason to believe that the person to be arrested has committed an offense against the United States or is [a noncitizen] illegally in the United States," and "that the person is likely to escape before a warrant can be obtained").

32. Critically, though § 1357(a)(2) uses the phrase "reason to believe" as the standard for executing warrantless civil immigration arrests, that phrase is "properly taken to signify probable cause." *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.

1975); *see also Tejeda-Mata v. Immigr. & Naturalization Serv.*, 626 F.2d 721, 725 (9th Cir. 1980) ("The phrase 'has reason to believe' [in § 1357] has been equated with the constitutional requirement of probable cause."); *Au Yi Lau v. U.S. Immigr. & Naturalization Serv.*, 445 F.2d 217, 222 (D.C. Cir. 1971) ("We agree with the Government that the arrest provision must be read in light of constitutional standards, so that 'reason to believe' must be considered the equivalent of probable cause.").

33. Section 1226 further provides the general process for detaining noncitizens who are present in the United States and chargeable as removable. *See J.U. v Maldonado*, 805 F.Supp.3d 482, 491–92 (E.D.N.Y. 2025) (citing *Jennings v. Rodriguez*, 583 U.S. 281, 303 (2018)). Except as provided in 8 U.S.C. § 1226(c), "the Attorney General 'may release' a[] [noncitizen] detained under § 1226(a) 'on . . . bond' or 'conditional parole.'" *Id.* (quoting § 1226(a)(1)–(2)).

34. Under this default rule, "[w]hen [a noncitizen] is apprehended, a DHS officer makes an initial custody determination." *Lopez Benitez v. Francis*, 795 F.Supp.3d 475, 493 (S.D.N.Y. 2025) (citing 8 C.F.R. § 236.1(c)(8)). If DHS decides to detain a noncitizen after such an individualized assessment, the noncitizen "may appeal [the] 'initial custody determination, including the setting of bond, to an immigration judge" through a custody redetermination hearing (i.e, a "bond hearing") at any time before a removal order becomes final. *Id.* (citing 8 C.F.R. § 1003.19(d)).

35. In conducting its initial individualized assessments pursuant to § 1226(a), ICE owes noncitizens a set of procedural protections established by regulation (and accordingly mandated as a matter of due process):

> Before DHS may exercise its discretion to detain a person § 1226(a) and its implementing regulations require DHS officials to make an individualized custody determination. Moreover, the regulations implementing § 1226(a) mandate that DHS officers make an individualized determination as to the appropriateness of detention based on two factors: (1) whether the noncitizen is a danger to property or persons and (2) whether the noncitizen is likely to appear for any future proceeding.

36. *Villegas ex rel. Guzman Andujar v. Francis*, 815 F.Supp.3d 248, 261 (S.D.N.Y. 2025), *appeal withdrawn sub nom. Villegas ex rel. Guzman Andujar v. Genalo*, No. 26-157, 2026 WL 1133137 (2d Cir. Feb. 10, 2026) (citing *Velesaca v. Decker*, 458 F.Supp.3d 224, 241 (S.D.N.Y. 2020), *appeal withdrawn sub nom. Velesaca v. Wolf*, No. 20-cv-02153, 2020 WL 7973940 (2d Cir. Oct. 13, 2020)) (internal quotation marks and brackets omitted); 8 C.F.R. § 1236.1(c)(8)). And where ICE detains an individual properly subject to § 1226(a) without meaningfully complying with those procedural requirements, it impinges upon that individual's liberty interest. *See Guzman Andujar*, 815 F.Supp.3d at 261.

## STATEMENT OF FACTS AND PROCEDURAL HISTORY

### ***ICE's New Policy of Effectuating Warrantless Arrests***

37. Until recently, DHS recognized the clear statutory limitations on its authority to make arrests without a warrant. After the first Trump Administration adopted a policy disregarding § 1357(a)(2)'s requirement of individualized probable cause and conducted large-scale immigration sweeps in Chicago, residents and community groups brought *Castañon Nava v. Dep't of Homeland Sec.*, a class action lawsuit challenging the policy.[3] Following the denial of its motion to dismiss, DHS

[3] 435 F.Supp.3d 880 (N.D. Ill. 2020).

entered into a consent decree in which it agreed to issue a nationwide Broadcast Statement of Policy acknowledging section 1357(a)(2)'s requirement that officers have "probable cause that an individual is in the United States in violation of U.S. immigration laws *and* probable cause that the individual is likely to escape before a warrant can be obtained for the arrest."[4] Additionally, the Broadcast Statement of Policy set forth a non-exhaustive list of factors that may be relevant to the "likelihood of escape" determination, which include an individual's "ties to the community (such as a family, home, or employment) or lack thereof."[5] It further specified that "mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude" the individual "is likely to escape before a warrant for arrest can be *obtained*."[6]

38. But over the past 20 months, Respondents and other government officials have repeatedly endorsed "a new 'arrest first, ask questions later' policy of making warrantless civil immigration arrests without probable cause to believe someone is both in the United States unlawfully and an escape risk."[7]

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[4] Settlement Agreement, *Castañon Nava v. U.S. Dep't of Homeland Sec.*, No. 1:18-cv-03757, Appendix A at 17 ("Broadcast Statement of Policy") (Feb. 7, 2022), Dkt. No. 155-1, *available at* https://immigrantjustice.org/final-settlement-regarding-ice-warrantless-arrests-and-vehicle-stops-overview-of-settlement-requirements-and-remedies/ (emphasis in original).

[5] *Id.*

[6] *Id.* (emphasis in original).

[7] *Escobar Molina*, 811 F.Supp.3d at 15–16; *see also Parada Cruz v. Mullin*, 837 F.Supp.3d 404, 411 (E.D.N.Y. 2026) ("I have rendered many a decision—double digits at this point—as have other judges in this District, pointing out that ICE agents have been arresting individuals in this District and figuring out the reasons afterwards."); *Limon Gonzalez v. Blanche*, No. 2:26-CV-01799-RFB-NJK, 2026 WL 2546938, at *10 (D. Nev. Aug. 28, 2026) (describing ICE's "detain first, justify later" approach to enforcement).

39. On June 11, 2025, following the *Castañon Nava* plaintiffs' motion to enforce the parties' Consent Decree and to extend that Consent Decree, in light of the government's material noncompliance, a senior DHS official issued an email "unilaterally declaring that ICE's obligations under the Consent Decree were terminated."[8]

40. During the last 19 months, not only have government officials repeatedly misstated their authority to conduct such arrests,[9] but officials have also explicitly endorsed mass warrantless arrests.[10]

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[8] *Castañon-Nava v. U.S. Dep't of Homeland Sec.*, 175 F.4th 828, 835 (7th Cir. 2026).

[9] For example, Respondents have announced that they arrest individuals based on mere reasonable suspicion, not probable cause. *See, e.g.*, Heather Knight & Hamed Aleaziz, *Trump Fired a U.S. Attorney Who Insisted on Following a Court Order*, THE NEW YORK TIMES (Sept. 26, 2025), https://www.nytimes.com/2025/09/26/us/trump-fires-us-attorney-california-immigration.html (stating that in July 2025, the Department of Justice fired the acting U.S. Attorney for the Eastern District of California hours after she told Border Patrol official Gregory Bovino that he could not arrest immigrants without probable cause); *Escobar Molina v. DHS*, 811 F.Supp.3d at 16 (stating that in September 2025, after the court had addressed allegations of an explicit ICE policy of conducting warrantless arrests, DHS issued a public statement decrying those allegations as "disgusting, reckless, and categorically FALSE" because "DHS law enforcement uses '*reasonable suspicion*' to make arrests.") (emphasis added); *id.* at 45 (reporting that in June 2025, White House Deputy Chief of Staff Stephen Miller told ICE officials, in sum and substance, "to stop developing target lists of immigrants and to instead 'just go out there and arrest illegal aliens' at Home Depots or 7-Elevens, betting that he and a handful of agents could go out on [Washington D.C.'s] streets and arrest 30 people right away."); Christal Hayes, *et al.*, *Jesús polished luxury vehicles at an LA car wash for years. Then ICE showed up*, BBC NEWS LOS ANGELES (June 12, 2025), https://www.bbc.com/news/articles/czxylvq392xo (same); *Escobar Molina*, 811 F.Supp.3d at 16 (stating that in October 2025, then-Chief Border Patrol Agent Gregory Bovino stated publicly: "We need reasonable suspicion to make an immigration arrest. . . . You notice I did not say probable cause, nor did I say I need a warrant."); *Hussen v. Noem*, 822 F.Supp.3d 944, 979 (D. Minn. 2026) (stating that in December 2025, commenting on its operations in Minnesota, DHS confirmed its policy that "DHS law enforcement uses 'reasonable suspicion' to make arrests[,]" not probable cause).

[10] *See, e.g.*, WAAY 31 NEWS, *Kristi Noem: ICE May Ask People to 'Validate' Their*

41. At least as of September 2025, Respondents eliminated the requirements that immigration officials obtain a supervisor's prior approval for an arrest, and even the requirement to fill out a form with information about the person they arrest.[11]

42. ICE has begun training its officers to "carry a blank form I-200" in the field, "for the arrest of each collateral so that an individual flight risk analysis is not needed."[12] Respondents have admitted that this is a new policy.[13]

43. At the same time, ICE has dramatically reduced or outright eliminated officer training as to what constitutes a lawful arrest.[14]

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*Identity* (YouTube, Jan. 15, 2026), https://www.youtube.com/watch?v=eJL_rST9uXk (reporting that in January 2026, former DHS Secretary Kristi Noem confirmed that if a person is near a suspected unlawful immigrant, DHS's policy is to "detain them as well" to "validate their identity" and "determine if they are breaking our federal laws."); Cecilia Vega et al., *Top ICE Official is Asked whether Americans Can Trust Investigation into Renee Good's Killing*, CBS NEWS (Jan. 18, 2026), https://www.cbsnews.com/news/ice-official-marcos-charles-minneapolis-tactics-60-minutes (reporting that in the same month, the Acting Director of ICE stated that "if [ICE officers] encounter [someone] in the area of which they're operating," they can stop those people and ask if they are citizens).

[11] Julia Ainsley et al., *Under Trump Administration, ICE Scraps Paperwork Officers Once Had to Do before Immigration Arrests*, NBC NEWS (Sept. 9, 2025), https://www.nbcnews.com/politics/national-security/trump-administration-ice-scraps-paperworkofficers-immigration-arrests-rcna229407.

[12] *Castañon Nava*, 806 F.Supp.3d at 848 (discussing uncontested evidence regarding and ICE Academy training presentation).

[13] *Id.* at 847 (stating that in proceedings, ICE described its policy of preparing Forms I-200 in the field as "a new policy that ha[d] never been implemented by ICE.").

[14] Rebecca Beitsch, *ICE whistleblower accuses agency of 'deficient, defective and broken' training amid hiring surge*, THE HILL (Feb. 23, 2026), https://thehill.com/homenews/administration/5751455-ice-officer-training-whistleblower.

44. Since Respondents' change in policy, warrantless arrests have "proliferated."[15]

45. On January 28, 2026, Todd Lyons, then the Senior Official Performing Duties of ICE Director, issued a memorandum regarding ICE's warrantless arrest authority.[16] The memorandum acknowledges that § 1357(a)(2) authorizes a warrantless immigration arrest only upon "reason to believe"—which it correctly defines as "probable cause"—that the person "arrested is in the United States in violation of" the immigration laws "*and* is likely to escape before a warrant can be obtained."[17] The memorandum then instructs that the plain meaning of "likely to escape" is that a person is "'likely to escape' if an immigration officer determines he or she is unlikely to be located at the scene of the encounter or another clearly identifiable location once an administrative warrant is obtained."[18, 19] But it then

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[15] *Escobar Molina*, 811 F.Supp.3d at 17.

[16] Mem. from Todd M. Lyons, Senior Official Performing the Duties of the Director if ICE, Civil Immigration Arrest Authority: Administrative Arrest Warrants and Warrantless Arrests (Jan. 28, 2026) ("Lyons Memo"), *available at* https://static01.nyt.com/newsgraphics/documenttools/e3524bab7246ffa8/0e6654f6-full.pdf.

[17] *Id.* at 2–3 & nn. 3, 5 (emphasis in original).

[18] *Id.* at 4.

[19] In May 2026, on a motion to enforce a preliminary injunction which enjoined ICE "from enforcing their policy or practice of making warrantless civil immigration arrests in the District of Columbia without a pre-arrest individualized determination by the arresting agent of probable cause that the person being arrested is likely to escape before a warrant can be obtained," the district court in *Escobar Molina* found that the Lyons Memo failed to comply with the preliminary injunction as it failed to correctly define "escape risk"—a term properly interpreted "narrowly to mean whether an individual will remain in place at the scene of encounter with law enforcement before an administrative warrant can be obtained for his arrest, rather than more broadly to mean whether the individual will be located at either the scene of encounter *or another clearly identifiable location*." *Escobar Molina v. U.S. Dep't of*

goes on to list several "[p]ossible factors" purportedly relevant to the likelihood of escape—including the person's "age and health," "ability and means to promptly depart the scene of the encounter," "control" over a vehicle in which they were "encountered," possession of "suspect[ed]" "fraudulent" identification or work authorization documents, or the "[p]resentation of unverifiable or suspected false information"—that together would render virtually anyone encountered on the street or in public likely to escape.[20]

46. Conspicuously, the Lyons Memo omits all reference to a person's "ties to the community (such as a family, home, or employment)," which the Broadcast Statement of Policy issued by DHS under the *Castañon Nava* Consent Decree enumerated as a relevant factor.[21]

47. Following DHS's widespread violations of the settlement agreement, including unilateral pronouncements disavowing the Broadcast Statement of Policy while motions to enforce the settlement agreement were still pending, the district court in *Castañon Nava* extended the duration of the Consent Decree.[22] The U.S.

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*Homeland Sec.*, 832 F.Supp.3d 22, 39 (D.D.C. 2026). The court further found that the memo failed to address the significance of community ties. *Id.* at 43.

[20] Lyons Memo at 5–6.

[21] Broadcast Statement of Policy at 18; *see generally* Lyons Memo. Also missing from the Lyons Memo is the Broadcast Statement of Policy's clear and unambiguous statement that "mere presence within the United States in violation of U.S. immigration law is not, by itself, sufficient to conclude that" a person "is likely to escape before a warrant for arrest can be *obtained*." Broadcast Statement of Policy at 18–19. Nor does the Lyons Memo specify, as the Broadcast Statement of Policy did, that "ICE Officers may stop a vehicle to enforce civil immigration laws only if they are aware of specific, articulable facts that reasonably warrant suspicion that the vehicle contains" a noncitizen or noncitizens "who may be illegally in the country." *Id.* at 20.

[22] *Castañon Nava*, 806 F.Supp.3d at 862.

Court of Appeals for the Seventh Circuit upheld that extension.[23] In the interim, and separate from *Castañon Nava*, courts across the country have consistently found that DHS has implemented unlawful policies and practices of conducting warrantless arrests without probable cause of both unlawful immigration status and likelihood of escape.[24]

48. Despite a spate of district court and court of appeals rulings finding ICE's warrantless arrest policy to be unlawful, ICE largely continues unabated in conducting them[25]—so much so that at least two courts have ordered that ICE

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[23] *Castañon-Nava*, 175 F.4th 828.

[24] *See, e.g.*, *M-J-M-A- v. Hermosillo*, 822 F.Supp.3d 1147 (D. Or. 2026); *Escobar Molina*, 811 F.Supp.3d at 49–50; *Ramirez Ovando*, 810 F.Supp.3d 1209, 1231–32; *United Farm Workers v. Noem*, 785 F.Supp.3d 672 (E.D. Cal. 2025); *see also Alfaro v. Mullin*, 831 F.Supp.3d 177, 182 (E.D.N.Y. 2026), *clarified on denial of reconsideration sub nom. Sanchez Alfaro v. Mullin*, No. CV 26-0766 (GRB), 2026 WL 1142478 (E.D.N.Y. Apr. 27, 2026) ("Collectively, the officers' testimony illustrates that arrest and detention practices deployed by ICE constitute a perversion of customary law enforcement practices in America. Under our Constitution, law enforcement officers may only effect an arrest when armed with a warrant or confronted with probable cause to make that arrest. Here, ICE officers presume that they will effect an arrest *unless* they can discover cause *not* to do so by performing a records check.") (emphasis in original); *Garcia Lanza*, 822 F.Supp.3d at 333–34, 339 (addressing unlawful, warrantless arrest and revocation of Special Immigrant Juvenile Status and stating that "[a] groundswell of caselaw responding to the recent onslaught of immigration enforcement efforts document troubling practices, while facts elicited in similar, ongoing cases have provided further evidence that the problems identified in these pages may be widespread"); *Gopie v. Lyons*, No. 25-CV-05229-SJB, 2025 WL 3167130 (E.D.N.Y. Nov. 13, 2025); *Pesantez Castro v. Maldonado*, No. 25-CV-06844 (JMA), 2025 WL 3723966 (E.D.N.Y. Dec. 23, 2025); *Clarke v. U.S. Dep't of Homeland Sec.*, No. 25-CV-6773 (GRB), 2025 WL 3674471 (E.D.N.Y. Dec. 18, 2025); *Arango v. Genalo*, No. 25-CV-6720 (RER), 2025 WL 3637500 (E.D.N.Y. Dec. 16, 2025).

[25] *See, e.g.*, *Ramirez Ovando v. Mullin*, No. 1:25-CV-03183-RBJ, 2026 WL 2641058 (D. Colo. May 12, 2026) (on motion to enforce a preliminary injunction ("PI") through which the court held ICE's warrantless arrest policy to be unlawful, finding that ICE had continued to conduct illegal warrantless arrests); *United Farm Workers v. Noem*, 829 F.Supp.3d 801 (E.D. Cal. 2026) (on motion to enforce PI through which court "enjoined Border Patrol Agents from conducting detentive stops in [that] District

provide remedial training to its officers.[26]

49. Summarizing ICE's concerted and illegal enforcement mechanisms as a whole, one district judge writes:

> The systematic character of this practice and its deliberate elimination of every structural feature that distinguishes constitutional authority from raw force place it beyond the reach of ordinary legal description. It is an assault on the constitutional order. It is what the Fourth Amendment was written to prevent. It is what the Due Process Clause of the Fifth Amendment forbids.[27]

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absent reasonable suspicion that the person stopped is a noncitizen who violated immigration laws," finding that agents had "again detained people without reasonable suspicion for doing so"); *Escobar Molina*, 832 F.Supp.3d at 28 (on motion to enforce PI in which the court enjoined DHS "from enforcing a policy and practice of making warrantless civil immigration arrests without probable cause to believe that the person being arrested is likely to escape before a warrant can be obtained," finding that ICE had continued to violate statutory and regulatory warrant requirements) (internal quotation marks omitted); *Garcia Lanza*, 822 F.Supp.3d at 339 ("Take, for example, the procedural infirmities regarding ICE's warrantless arrest of petitioner. . . . Despite a torrent of [cases holding that holding that ICE officers were prohibited from using post-arrest administrative warrants and NTAs to justify warrantless arrests] from courts across the country, there seems to be little impact on respondents' practices."); *Parada Cruz*, 837 F.Supp.3d at 412 ("This practice of after-the-fact arrest warrants can be called many things—illegal, improper, and unconstitutional, among them. But whatever label one wishes to apply, the practice is fundamentally at odds with and offensive to lawful, constitutional behavior in this country."); *United States v. Quintanilla-Chavez*, 807 F.Supp.3d 641, 670 (W.D. Tex.), *reconsideration denied,* 811 F.Supp.3d 839 (W.D. Tex. 2025) ("At every stage of its investigation and the proceedings before this Court, the Government has approached the bounds of the Fourth Amendment and the warrant requirement in particular with indifference bordering on disdain.").

[26] *Alfaro*, 831 F.Supp.3d at 182, 185–86 (stating that "[c]ollectively, the [ICE] officers' testimony illustrates that arrest and detention practices deployed by ICE constitute a **perversion of customary law enforcement practices in America**," and ordering government respondents to "review the arrest and detention practices being utilized by ICE in this judicial district as well as the training provided to its officers") (emphasis added); *Ramirez Ovando*, 2026 WL 2641058.

[27] *Urquilla-Ramos v. Trump*, 821 F.Supp.3d 603, 611 (S.D.W. Va. 2026); *see also Alfaro*, 831 F.Supp.3d at 179 (describing ICE's "recent surge in enforcement efforts, in violation of statutes, regulations and the Constitution"); *Garcia Lanza*, 822 F.Supp.3d at 329, 340 ("While the Executive Branch retains the right – as it has done – to set *policy* regarding immigration matters, it is forbidden from trampling our

***ICE's Record of Unreliable Gang Association Allegations***

50. ICE has a longstanding pattern of reliance on spurious data in making gang membership allegations. Indeed, it has a history of resting such allegations on "no evidence" at all when they derive from the say-so of another immigration agency, such as Homeland Security Investigations,[28] and of otherwise resting allegations on unreliable factors, such as the presence of tattoos—regardless of the image depicted—living in neighborhoods where gang members reside, clothing, police reports, and immigration records.[29]

51. For example, after the Trump Administration announced its designs to focus law enforcement resources on Tren de Aragua in January 2025,[30] despite the gang's relatively low presence in the United States,[31] the administration's track

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system of laws – a system which has safeguarded this nation for close to 250 years. . . . There seems to be a substantial disconnect between the practices, policies and training deployed by ICE, and the law. The abhorrent and illegal practices identified in this opinion are not limited to this case but are seemingly being inflicted on a widespread basis.") (emphasis in original).

[28] DEPORTATION BY ANY MEANS NECESSARY: HOW IMMIGRATION OFFICIALS ARE LABELING IMMIGRANT YOUTH AS GANG MEMBERS, IMMIGR. LEGAL RESOURCE CTR. (2018), https://www.ilrc.org/sites/default/files/ resources/deport_by_any_means_nec-20180521.pdf, at 10.

[29] *See* Sergio Martínez-Beltrán, *Advocates say flawed 'checklist' targets Venezuelans for deportation under archaic wartime act*, NPR (Mar. 31, 2025), https://www.npr.org/2025/03/31/nx-s1-5345832/advocates-say-flawed-checklist-dhs-venezuelans-for-deportation-under-alien-enemies-act.

[30] Exec. Order No. 14157, 90 FR 8439 (2025).

[31] *See* Sarah Blasket, et al., *Trump's 48-hour scramble to fly migrants to a Salvadoran prison*, THE WASHINGTON POST (May 4, 2025), https://www.washingtonpost.com/immigration/2025/05/04/trump-el-salvador-alien-enemies-act-venezuelans/ ("Experts who have studied Tren de Aragua say it has not established a strong presence in the U.S., but Trump spoke of the gang as if it were in every American city. . . . Experts estimate the number of active Tren de Aragua members in the United States is probably in the hundreds."); Allison Sherry & Martin Kaste, *What is Tren de Aragua's footprint in the U.S.? Experts say smaller than*

record of accurately identifying members of that gang was abysmally marred by hundreds of demonstrably false allegations. Despite claiming that "all of the 238 Venezuelan men" removed via the Alien Enemies Act[32] and imprisoned in El Salvador in 2025 "are members of Tren de Aragua," subsequent investigations have "found little evidence of any criminal background — or any association with the gang — for most of the men."[33]

***ICE Use of Force Policy***

52. ICE has developed strict policies regarding its officers' use of force, "guided by constitutional law" and a "respect for human life and the communities [it] serve[s]." Mem. from Alejandro N. Mayorkas, Sec'y of Homeland Sec., Dep't of Homeland Sec., Update to the Department Policy on the Use of Force (Feb. 6, 2023) ("Feb. 2023 Update"),[34] at 1–3. Undergirding those policies is the basic tenet that officers may "use force only when no reasonably effective, safe, and feasible alternative appears to exist[.]" U.S. IMMIGR. AND CUSTOMS ENF'T, DIRECTIVE 19009.3:

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*federal officials say*, NPR (Apr. 8, 2025), https://www.npr.org/2025/04/08/g-s1-58849/tren-de-araguapresence-reality-check.

[32] Rev. Stat. § 4067, 50 U.S.C. § 21.

[33] Julie Turkewitz, et al., *'Alien Enemies' or Innocent Men? Inside Trump's Rushed Effort to Deport 238 Migrants*, THE NEW YORK TIMES (Apr. 16, 2025), https://www.nytimes.com/2025/04/15/world/americas/trump-migrants-deportations.html; *see also* Andreína Chávez Alava, Venezuela: *252 CECOT Migrants Cleared of 'Tren de Aragua' Gang Association*, VENEZUELANALYSIS (Aug. 6, 2025), https://venezuelanalysis.com/news/venezuela-252-cecot-migrants-cleared-of-tren-de-aragua-gang-association/ ("Venezuelan Interior Minister Diosdado Cabello confirmed following an investigation that the 252 Venezuelan men forcibly removed from the United States and held for four months in El Salvador's notorious CECOT prison were found to have no ties to the so-called Tren de Aragua gang.").

[34] https://www.dhs.gov/sites/default/files/2023-02/23_0206_s1_use-of-force-policy-update.pdf

FIREARMS AND USE OF FORCE (May 26, 2023) ("Directive 19009.3"), at 1.[35] To that end, "[t]he use of excessive force by ICE employees is strictly prohibited." *Id.*; *see also* Feb. 2023 Update at 4 ("The use of excessive force is unlawful and will not be tolerated."). Officers "may use only the level of force that is objectively reasonable in light of the totality of facts and circumstances confronting the officer at the time force is applied." Directive 19009.3. at 6.

53. In line with ICE's broad policy, officers "must employ tactics to de-escalate by the use of communication or other techniques during an encounter to stabilize, slow, or reduce the intensity of a potentially violent situation without using physical force, or with a reduction in force." *Id.* at 7; *see also* Feb. 2023 Update at 3 (Officers are instructed "to employ tactics and techniques that effectively bring an incident under control while promoting the safety of [ICE officers] and the public, and that minimize the risk of unintended injury or serious property damage.").

54. Thus, "[w]hen feasible, prior to the application of force," an ICE officer "must attempt to identify themselves and issue a verbal warning to comply with the [officer's] instructions." *Id.* at 4. "In the event that [an officer] issues such a warning, where feasible, the [officer] should afford the subject a reasonable opportunity to voluntarily comply before applying force." *Id.*

55. Critically, officers must "also avoid intentionally and unreasonably placing themselves in positions in which they have no alternative to using deadly force." *Id.*

[35] https://www.ice.gov/doclib/policy/19009.3.pdf

56. ICE officers are plainly instructed that "[d]eadly force shall not be used solely to prevent the escape of a fleeing subject. *Id.* at 8. In general, "[f]irearms shall not be discharged solely to disable moving vehicles."

57. "As soon as practicable following a use of force and the end of any perceived public safety threat," ICE officers are obligated to "obtain appropriate medical assistance for any subject who has visible or apparent injuries, complains of being injured, or requests medical attention. This may include rendering first aid if properly trained and equipped to do so, requesting emergency medical services, and/or arranging transportation to an appropriate medical facility." *Id.*; *see also* Directive 19009.3 at 7 ("Following any use of force incident and when safe to do so, Authorized Officers must seek medical assistance for any person who appears or claims to be injured.").

***Factual Background of these Proceedings***

*Life in New York*

58. Oscar is a 28-year-old father of two who has lived in New York for nearly five years. In New York, he is surrounded by his family, including his two children, his aunts and uncles, his cousins, and his sister. He works in construction to support his children and is one of their primary caregivers.

*Arrest History*

59. Oscar has been arrested by law enforcement on two occasions. First, in 2023, he was arrested in the Bronx and charged with robbery and related offenses. He was convicted in April 2025 of grand larceny in the fourth degree, under NYPL § 155.30(5). That conviction is currently on appeal. On August 4, 2025, Oscar was

arrested in Manhattan and charged with crimes relating to alleged drug sale. The case remains pending. Oscar has no history of failing to appear for a single court proceeding.

*ICE's October 8 Shooting*

60. On October 8, 2026, Oscar drove to pick his five-year-old son up from school, like any normal day. When his son told him that he was hungry, Oscar took him to McDonald's to pick up a snack, and when they finished, Oscar drove them home, [redacted].[36] At around 4 p.m., their neighborhood was "a busy commercial corridor,"[37] with "a number of high schools . . . , a charter school and at least three day cares,"[38] and other "New Yorkers were coming home from work or picking up their children."[39]

61. Arriving home, Oscar began looking for parking. He identified a spot and pulled in before realizing that he was parking in front of a fire hydrant.[40]

62. Oscar backed his car up one or two feet before he started to pull forward out of his street parking spot. As Oscar began to pull out, however, an armed man,

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[36] *See* Karen Yi, *What we know about the ICE shooting in NYC*, GOTHAMIST (Oct. 10, 2026), https://gothamist.com/news/what-we-know-about-the-ice-shooting-in-nyc.

[37] *Id.*

[38] Ed Shanahan, Luis Ferré-Sadurní and Hamed Aleaziz, *ICE Agent Shoots Man During Arrest Attempt in New York Neighborhood*, THE NEW YORK TIMES (last updated Oct. 9, 2026), https://www.nytimes.com/2026/10/08/nyregion/ice-shooting-nyc-bronx.html,

[39] Yi, *supra* n. 36.

[40] *See* AP NEWS, *CCTV shows moment ICE officer shoots man while making arrest in New York* (Oct. 9, 2026), https://apnews.com/video/cctv-shows-moment-ice-officer-shoots-man-while-making-arrest-in-new-york-d95d3beb1fb14b4b8f30dfa600c9e182 (showing Oscar parking his Honda CR-V in front of a hydrant then starting to pull away).

dressed in civilian clothes and wearing black face coverings, simultaneously bolted towards his vehicle—a silver Honda CR-V—with his pistol drawn.[41] He was followed closely behind by several additional masked men in plain clothes carrying weapons.

63. Those armed men—later identified as ICE agents—bore no apparent indication that they worked for a law enforcement agency and made no attempt to identify themselves.

64. Among the plainclothes agents was Brenden Cuni, an ICE Supervisory Detention and Deportation Officer ("SDDO") who has been repeatedly accused in federal courts of having conducted violent and unlawful arrests and of providing false testimony in federal proceedings.[42] Cuni has "been spotted wielding an assault-style rifle at various immigration enforcement actions over the past year and a half," including in New York City.[43] "In one case, a 21-year-old man in The Bronx alleged Cuni tased him a half-dozen times while he lay on the ground and later called him a 'maldito Mexicano' or 'fucking Mexican' in Spanish[.]"[44] In another case, a man in Corona, Queens accused Cuni of "repeatedly hit[ting] him with a stun gun."[45] Cuni's social media, under the username "shooter.914", is filled with pictures of him

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[41] *See id.* (describing ICE officers as wearing plain clothes and "holstered guns");

[42] Dhruv Mehrotra, Ali Winston & Maddy Varner, *ICE Agent at NYC Shooting Has History of Alleged Violence and Illegal Arrests*, WIRED (Oct. 9, 2026), https://www.wired.com/story/ice-agent-at-nyc-shooting-has-history-of-alleged-violence-and-illegal-arrests/; *see also* Gwynne Hogan, *ICE Supervisor at Center of NYC Shooting Named in Multiple Lawsuits Alleging Violent, Illegal Arrests*, THE CITY REPORTER (Oct. 9, 2026), https://www.thecityreporter.nyc/2026/10/09/brenden-cuni-ice-officer-shooting-arrests/.

[43] Hogan, *supra* n. 42.

[44] *Id.*

[45] *Id.*

brandishing assault weapons, including the one he wielded at the scene on October 8.[46] SDDO Cuni has also been found to have provided false information in several judicial proceedings.[47]

65. Not knowing who was pointing a weapon inside the vehicle in which his five-year-old son sat, Oscar was terrified for his and his son's lives.

66. At no point did ICE officers advise Oscar who they were, present him a warrant of arrest, refer to him by his name or otherwise communicate with him in any substantive or clarifying way through his partially rolled-down car window.

67. Instead, the officer who first approached his car struck his driver-side window. When it shattered, glass exploded into Oscar's face and arm, leaving a wound in his shoulder that remains unhealed.

68. After shattering Oscar's window, the same officer began firing shots into the vehicle from a pistol through the driver-side window while Oscar's five-year-old son cowered in the back seat. ICE officers fired at least seven shots into the vehicle.[48]

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[46] Mehrotra et al., *supra* n. 42.

[47] *See id.* For example, in June 2026, U.S. District Judge Brian Cogan, of this District, found Cuni had lied in sworn statements, including by falsely claiming that he had obtained a warrant for a habeas petitioner's ICE arrest—a fabricated narrative later proven false by video footage. *See id.*; *see also Chaglla v. Maldonado*, No. 26-CV-4308 (BMC), 2026 WL 2529494 (E.D.N.Y. Aug. 27, 2026). Similarly, just last week, U.S. District Judge Gary Brown, also of this District, considering the habeas petition of an individual arrested by a cohort of ICE agents that included Cuni, found that Cuni had issued a fraudulent arrest warrant in which he falsely claimed that the petitioner could be positively identified by biometrics, then later attempted to clean up his tracks by entering the petitioner's name into the database after the fact so that it would appear that the record had already existed at the time he fabricated the warrant. *Almonte v. Genalo*, No. CV 26-3633 (GRB), 2026 WL 2983349 , at *9–10 (E.D.N.Y. Oct. 5, 2026).

[48] John Miller, Julianna Bragg, Mark Morales, Alex Stambaugh and Eric Levenson, *ICE Agents Shot at Man in Car with His 5-year-old Son,* CNN (Oct. 11, 2026),

69. Video footage shows a chaotic scene as neighbors and passersby panicked, ducked for cover, and fled from the gunshots.[49]

70. Video footage also clearly shows that Oscar had begun pulling his vehicle *forward*, not backwards at any officers, and that no ICE officers or vehicles were stationed in front of Oscar's vehicle. Instead, as Oscar attempted to pull away from the officer who was *already shooting* inside his vehicle, a car careened from behind and blocked the path of Oscar's car.[50]

71. One of the bullets struck Oscar in the neck.

72. After ICE shot him, Oscar exited his vehicle and pleaded for medical assistance, fearing that he was dying. And believing the same, his son began yelling that the masked individuals had killed his dad.

73. Instead of providing aid, however, ICE officers threw Oscar down and handcuffed him, "pinn[ing] [him] to the ground"[51] before leaving him "slumped outside his dented car, bleeding from his neck and fading in and out of consciousness."[52] Oscar still has wounds on his chest from being thrown on the pavement.

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https://www.cnn.com/2026/10/08/us/nyc-ice-shooting; Maria Cramer, Nate Schweber and Luis Ferré-Sadurní, *What We Know About the Man Shot By ICE*, THE NEW YORK TIMES (Oct. 9, 2026), https://www.nytimes.com/2026/10/09/nyregion/oscar-belgal-ice-shooting-nyc.html.

[49] CNN, *CCTV shows moment ICE officer shoots man while making arrest in New York* (Oct. 9, 2026), https://apnews.com/video/cctv-shows-moment-ice-officer-shoots-man-while-making-arrest-in-new-york-d95d3beb1fb14b4b8f30dfa600c9e182.

[50] *Id.*

[51] Shanahan et al., *supra* n. 38.

[52] Hogan, *supra* n. 42.

74. Nor did ICE attempt in any way to facilitate Oscar's transfer to the hospital. Instead, it was New York Police Department ("NYPD") officers who arrived at the scene following the shooting who took Oscar away for medical aid and eventually placed him in an ambulance—after informing ICE that an ambulance had arrived and after ICE officers did not act.[53] As NYPD officers transported Oscar away, he was "motionless."[54]

75. At New York-Presbyterian Allen Hospital, doctors were able to stop Oscar's bleeding. But as soon as he awoke, ICE officers handcuffed him to his hospital bed. Other ICE officers from the scene of Oscar's shooting were also present.

76. Only upon waking in the hospital was Oscar informed that the individuals who ambushed him with guns drawn and shot him were ICE officers.

77. Doctors advised Oscar that he required surgery to remove ICE's bullet from his neck and instructed him to return to receive surgery during the week of October 12, 2026. ICE then transported Oscar to New Jersey, where it held him overnight, before transferring him to MDC on October 9, 2026. Oscar's detention is governed by 8 U.S.C. § 1226(a). Ex. B, INA § 236(a) Notice.

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[53] NYPDNews (@nypdnews), X (Oct. 9, 2026, at 10:36 AM EST), https://x.com/NYPDnews/status/2108567393479876731 (NYPD bodycam footage in which an NYPD officer advises ICE that an ambulance is present, returns to his car, yells to ICE "Are we putting him in or what?", and then returns to bring Oscar to the ambulance himself with another NYPD officer).

[54] Jonathan Dienst, Tom Winter and Jennifer Millman, *NY judge orders Friday hearing for man shot by ICE with 5-year-old in car*, NBC NEW YORK (Oct. 9, 2026), https://www.nbcnewyork.com/new-york-city/ny-judge-orders-friday-hearing-for-man-shot-by-ice-with-5-year-old-in-car/6557717.

78. Oscar is at least the thirty-second victim of an ICE shooting since January 2025.[55]

79. ICE has alleged that its arrest of Oscar was "targeted" and based on allegations of "associations" with the Trinitarios gang.[56] But ICE has filed no evidence of those allegations in Oscar's removal proceedings and has not otherwise indicated any basis for such allegations. Oscar vehemently denies involvement with any gang or organized criminal organization.[57]

80. ICE did not prepare a Notice to Appear charging Oscar as removable until October 9, 2026. Ex. A, Notice to Appear.

81. Following the events of October 8, Bronx District Attorney Darcel Clark declared her office's burgeoning efforts to conduct a "thorough" investigation of ICE's misconduct.[58] Similarly, New York Attorney General Letitia James announced an intent to launch an independent investigation of the shooting—an effort supported by United States Representative Adriano Espaillat.[59]

82. Upon information and belief, ICE now holds Oscar in a segregated unit at MDC. With the bullet still lodged in his neck, the entire left side of Oscar's face remains numb. He struggles to hear anything out of his left ear, describing what he does hear as sounding as if it were far off in the distance. Meanwhile, jail staff offer him only ibuprofen for his pain. Throughout his incarceration at MDC, he has been

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[55] Hogan, *supra* n. 42.

[56] Cramer et al., *supra* n. 48.

[57] *Id.*

[58] Miller et al., *supra* n. 48.

[59] *Id.*

unable to contact his family. And separated from the general population, wounded and deprived of contact with people, he replays the traumatic events of October 8 over and over in his memory, with his son's hysterical cries ringing endlessly in his head. His son, meanwhile, did not speak for several days after seeing his father shot, and suffers nightmares every night.[60]

## ARGUMENT

### I. RESPONDENTS' WARRANTLESS ARREST CONSTITUTES AN EGREGIOUS VIOLATION OF THE FOURTH AMENDMENT AND THE INA.

83. In arresting Oscar on October 8, Respondents plainly failed to comply with the warrant requirements of the INA and of the Constitution. Upon information and belief, Respondents lacked a physical Form I-200 administrative warrant necessary to effectuate arrest under 8 U.S.C. § 1226(a). But even if they did possess such a document, that warrant was *void ab initio* as the fact that no removal proceedings had been initiated against Oscar on October 8 means that the warrant could not have been statutorily compliant. And because Respondents lacked the statutorily required justification to conduct a warrantless arrest, that arrest was unlawful.

#### A. Respondents Unequivocally Lacked a Statutorily Valid Warrant of Arrest.

84. Upon information and belief, Respondents lacked a warrant to effectuate Oscar's arrest under 8 U.S.C. § 1226(a).

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[60] Cramer et al., *supra* n. 48.

85. But critically, even if Respondents had created a Form I-200 prior to Oscar's arrest, such use of that warrant would violate the INA.

86. "If ICE is going to use an arrest warrant, then there must be removal proceedings initiated before or at the time of the arrest." *Parada Cruz*, 837 F.Supp.3d at 409; *see also Gopie*, 2025 WL 3167130, at *1 ("The NTA begins the removal process, and at that time or after its issuance, the Government can then effectuate his arrest, and, if necessary, detention, until removal proceedings are completed."); *Cancino Castellar v. McAleenan*, 388 F.Supp.3d 1218, 1224 (S.D. Cal. 2019) ("DHS regulations authorize an immigration officer to formally arrest and take the [noncitizen] into custody pursuant to a Form I-200 Warrant of Arrest *at the time an NTA is issued.*") (emphasis added); *Castellar v. Nielsen*, No. 17-CV-0491, 2018 WL 786742, at *3 (S.D. Cal. Feb. 8, 2018) ("*At the time an NTA is issued*, DHS regulations authorize an immigration officer to formally arrest and take the [noncitizen] into custody.") (emphasis added).

87. "There is no leeway" to this rule: "If ICE wants to use a warrant, it must have a valid NTA in place." *Parada Cruz*, 837 F.Supp.3d at 409.

88. Thus, even if ICE had created a Form I-200 prior to its arrest of Oscar, that warrant would have been *void ab initio*, as no valid NTA existed at the time of the arrest. *See* Ex. A, Notice to Appear (showing an ICE signature timestamp of October 9, 2026—the day *after* Oscar's arrest).

89. This violation renders Respondents' arrest unlawful under the INA and the Fourth Amendment.

**B. Respondents' Warrantless Arrest Violates the Fourth Amendment and the INA Because Officers Lacked Probable Cause that Oscar Posed a Flight Risk.**

90. As described *supra*, immigration officers making immigration arrests are generally required to have a warrant. *Arizona*, 567 U.S. at 408 (2012).

91. If no warrant has been issued, officers have more limited authority. *Id.* This warrant requirement is not satisfied by the post-hoc issuance of I-200 warrants, which is a "manifestly illegal practice." *Garcia Lanza*, 822 F.Supp.3d at 333; *see also Parada Cruz*, 837 F.Supp.3d at 409.

92. Section 1357(a)(2) permits warrantless arrests only if the officer has "reason to believe" that the individual "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2); 8 C.F.R. § 287.8(c)(2)(ii) (same). "[R]eason to believe," as used in Section 1357, is the equivalent of probable cause. *Cantu*, 519 F.2d at 496; *see also Tejeda-Mata*, 626 F.2d at 725; *Au Yi Lau*, 445 F.2d at 222–23.

93. Respondents cannot make that showing here. First, if, as Respondents have claimed to the press, ICE intended to conduct a targeted arrest of Oscar from the outset,[61] then Respondents lack any justification for approaching him without

[61] It is worth noting that Respondents' justification for arrest—that Oscar is believed to have "either indirect or direct knowledge" of a 2025 shooting of a law enforcement officer, *see* Cramer et al., *supra* n. 48—is dubious at best. Indeed, ICE has no investigative authority over such crimes, and such allegations would bear no relation on a noncitizen's removability. Nor is there a warrant for Oscar's arrest by state criminal authorities, in relation to investigation of that shooting or for any reason. *See* Katie Honan & Gwynne Hogan, *In Call with Mamdani, White House Demanded NYPD Arrest Immigrant Shot by ICE Agents*, DOCUMENTED (Oct. 9, 2026), https://documentedny.com/2026/10/09/mamdani-trump-shooting-ice-oscar-belgal/ (reporting that NYPD declined to take Oscar into its custody on October 8 as no warrant existed for his arrest).

first having obtained a statutorily compliant warrant. Section 1357(a)(2)'s limited exception to the general warrant requirement serves as a stop-gap authorizing ICE officers to make warrantless arrests where obtaining a warrant would be impracticable and exigent circumstances require an immediate arrest; it is not a loophole that officers can exploit to avoid the statutory and constitutional warrant requirement. *See Niz-Chavez v. Garland*, 593 U.S. 155, 172 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them.").

94. Nor can Respondents claim that Oscar's attempts, on October 8, to remove himself and his son from an objectively life-threatening scenario justified ICE's warrantless arrest. Here, ICE itself intentionally created the conditions that would reasonably cause anyone to fear for their lives. Its officers stormed Oscar's vehicle, where he and his son sat, with guns drawn. They made no attempt to identify themselves as law enforcement nor communicate with Oscar in any way before opening fire upon, directly shooting, and ultimately handcuffing him. Thus, "[t]here was no reasonable way to identify them as ICE agents," *see* Miller et al., *supra* n. 48 (quoting Mayor Zohran Mamdani), and any reasonable person would fear for their life and the life of their child, as Oscar did.

95. Thus, Respondents violated the Fourth Amendment and the INA in effectuating Oscar's warrantless arrest.

## II. ICE'S BRUTAL AND PATENTLY UNREASONABLE USE OF DEADLY FORCE AND FAILURE TO CALL FOR MEDICAL ASSISTANCE VIOLATES OSCAR'S SUBSTANTIVE DUE PROCESS RIGHTS AND CONSTITUTES A COMPREHENSIVE FAILURE TO ADHERE TO INTERNAL USE OF FORCE GUIDELINES.

96. In addition to their failure to abide by plain and explicit arrest requirements, Respondents violated Oscar's substantive due process right to be free from abusive government conduct, as well as nearly every provision of ICE's binding guidance regarding the use of deadly force. *See DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989) (quoting *Davidson v. Cannon*, 474 U.S. 344, 348 (1986)) ("Like its counterpart in the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment was intended to prevent government 'from abusing its power, or employing it as an instrument of oppression[.]'"); *Martinez v. McAleenan*, 385 F.Supp.3d 349, 356 (S.D.N.Y. 2019) (quoting *Rochin v. California*, 342 U.S. 165, 172 (1952)) (substantive due process "prevents the government from engaging in conduct that 'shocks the conscience[.]'"); *Johnson v. Glick*, 481 F.2d 1028, 1032 (2d Cir. 1973) ("[The] application of undue force by law enforcement officers deprives a suspect of liberty without due process of law.").

97. At bottom, in approaching Oscar's car with guns drawn, in plain clothes and no identification and no pronouncement of law enforcement affiliation, and in a busy commercial and residential neighborhood, ICE violated its basic policy of "respect for human life and the communities [it] serve[s]." Feb. 2023 Update at 1.

98. More specifically, ICE cannot plausibly claim that a more "effective" or "safe" alternative existed beyond their immediate, military-style escalation, to protect not only Oscar and his five-year-old son, but also the hundreds of local residents and

children passing by the busy street corner at 4 P.M. on a Thursday afternoon. *See* Directive 19009.3 at 1. In other words, at the very outset of its arrest, and seemingly by design, ICE opted to brazenly flout any consideration of safety of Oscar, his child, the community or its own officers.

99. Immediately escalating their encounter with Oscar, the ICE officers also flouted their responsibility to identify themselves, issue a verbal warning, and provide Oscar time to respond to that warning. Feb. 2023 Update at 4.

100. Approaching Oscar with guns drawn, including in (at least one case) with an assault-style rifle drawn,[62] without ever identifying themselves or communicating with Oscar, the ICE officers ignored their responsibility to "avoid intentionally and unreasonably placing themselves in positions in which they have no alternative to using deadly force." *Id.*

101. Discharging their weapons into Oscar's vehicle, ICE officers violated ICE's prohibition against the use of deadly force "solely to prevent the escape of a fleeing subject." *Id.* at 8.

102. And in failing to provide Oscar medical aid, or to transport him so that he could receive such aid, the ICE officers blatantly neglected their obligation to obtain such medical aid. *Id.*; *see also* Directive 19009.3 at 7.

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[62] It bears noting that ICE officers are "prohibited from carrying any personally owned shoulder-fired firearms . . . for official use." IMMIGR. AND CUSTOMS ENF'T, FIREARMS AND USE OF FORCE HANDBOOK (2021), https://imlive.s3.amazonaws.com/Federal%20Government/ID255426897069329047495080324203699905714/2.2.1_Attachment%2021%20-%20ICE%20Firearms%20and%20Use%20of%20Force%20Directive%20and%20Handbook.pdf, at 18. Nonetheless, SDDO Cuni wielded an assault-style rifle at the scene of arrest on October 8—the same assault-style rifle he has posted on his personal social media. *See* Mehrotra et al., *supra* n. 42.

103. The APA, 5 U.S.C. §§ 551-59, 701-06, authorizes suits by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. § 702. Agencies are liable under the APA for failing to comply with rules that have the force and effect of law. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures."). A rule has the force of law where it binds the agency and affects the rights of individuals, whether or not the rule is more rigorous than would otherwise be required and whether or not it has been published in the Federal Register. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

104. Thus, the *Accardi* doctrine "is not limited to rules attaining the status of formal regulations"; rather, in all instances "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures." *Montilla*, 926 F.2d at 167 (quoting *Morton*, 415 U.S. at 235); *see also Mass. Fair Share v. Law Enf't Assistance Admin.*, 758 F.2d 708, 711 (D.C. Cir. 1985) ("It has long been settled that a federal agency must adhere firmly to self-adopted rules by which the interests of others are to be regulated.").

105. Such procedures include internal agency policies. *See, e.g., Nat'l Ass'n of Home Builders v. Norton*, 340 F.3d 835, 841, 852 (9th Cir. 2003) (upholding *Accardi* challenge under 5 U.S.C. § 706 and finding that "[h]aving chosen to promulgate the [ ] policy, the [Fish and Wildlife Service] must follow that policy"); *Alamo Exp., Inc. v. United States*, 613 F.2d 96, 98 (5th Cir. 1980) (finding APA violation by Interstate

Commerce Commission because it failed to comply with internal procedure); *U.S. v. Heffner*, 420 F.2d 809, 812 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . ."). And they include immigration agency policy, specifically. *See, e.g., I.N.S. v. Yueh-Shaio Yang*, 519 U.S. 26, 32 (1996) ("Though [the INS's] discretion is unfettered at the outset, if it announces and follows—by rule or by settled course of adjudication—a general policy by which its exercise of discretion will be governed, an irrational departure from that policy (as opposed to an avowed alteration of it) could constitute action that must be overturned as arbitrary, capricious, or an abuse of discretion."); *Montilla*, 926 F.2d at 91 (applying *Accardi* doctrine to internal INS guidance around the right to counsel in deportation hearings); *Damus v. Nielsen*, 313 F.Supp.3d 317, 336 (D.D.C. 2018) ("[I]n the immigration context, the Second Circuit has explained that the *Accardi* doctrine[] . . . can be applied to internal agency guidance." (citing *Montilla*, 926 F.2d at 167)).

106. In comprehensively failing to adhere to clear policy around the use of force in arresting and detaining Oscar, Respondents violated the APA and the Fifth Amendment.

## III. RESPONDENTS HAVE ACTED WITH DELIBERATE INDIFFERENCE TO OSCAR'S SERIOUS MEDICAL NEEDS.

107. Moreover, Respondents' failure to protect Oscar and provide him adequate medical care for the gunshot wound they inflicted, from the outset of his arrest and continuing into the duration of his confinement, violates his substantive due process rights such that his immediate release is required.

108. "[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *Helling v. McKinney*, 509 U.S. 25, 32 (1993) (quoting *DeShaney v. Winnebago Cnty. Dep't of Soc. Serv.*, 489 U.S. 189, 199–200 (1989)). Thus, where the government "fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause." *DeShaney,* 489 U.S. at 200.

109. Noncitizen detainees, even those with criminal records, are civil detainees held pursuant to civil immigration laws. *Zadvydas*, 533 U.S. at 690 ("The proceedings here at issue are civil, not criminal, and we assume that they are nonpunitive in purpose and effect."). Their protections are thus derived from the Fifth Amendment, which similarly protects any persons in the custody of the United States from conditions that amount to punishment. *Id.*; *Wong Wing v. U.S.*, 163 U.S. 228, 237–38 (1896); *see, e.g.*, *Hernandez Roman v. Wolf*, 977 F.3d 935, 943 (9th Cir. 2020) ("The Fifth Amendment requires the government to provide conditions of reasonable health and safety to people in its custody."); *Hope v. Warden of York Cnty. Prison,* 972 F.3d 310, 325 (3d. Cir. 2020).

110. Many federal courts of appeals, including the Second Circuit, have held that noncitizen detainees must receive a constitutional standard of protection equivalent to that provided pre-trial detainees within the criminal legal system. *See Charles v. Orange Cnty.*, 925 F.3d 73 (2d Cir. 2019); *see also E.D. v. Sharkey*, 928 F.3d 299, 306 (3d Cir. 2019) ("This Circuit has long viewed the legal rights of an

immigration detainee to be analogous to those of a pretrial detainee."); *Chavero-Linares v. Smith*, 782 F.3d 1038, 1041 (8th Cir. 2015); *Belbachir v. County of McHenry*, 726 F.3d 975, 979 (7th Cir. 2013); *Porro v. Barnes*, 624 F.3d 1322, 1326 (10th Cir. 2010); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). That standard flows from the Fifth and Fourteenth Amendments, which provide rights "at least as great as the Eighth Amendment protections available to a convicted prisoner." *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983).

111. Inadequate medical care in prison is unconstitutional where there is "deliberate indifference to [the incarcerated individual's] serious medical needs." *Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *see also Charles*, 925 F.3d at 85–86. This test has two requirements.

112. First, a medical need must be "sufficiently serious." *Salahuddin v. Goord*, 467 F.3d 263, 279 (2d Cir. 2006) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). Two inquiries are required to determine if the need meets this threshold: whether the incarcerated individual was "actually deprived of adequate medical care," and "whether the inadequacy in medical care is sufficiently serious." *Id.* at 279–80. As to the latter inquiry, "seriousness" may be demonstrated even where medical care has not been denied, but rather has been inadequate, such as where there has been a delay or interruption in medical treatment. *Id.* at 280.

113. "The serious medical needs standard contemplates a condition of urgency such as one that may produce death, degeneration, or extreme pain." *Charles*, 925 F.3d at 86 (citing *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996)); *see also Howard v. Brown*, No. 15 CIV. 9930 (ER), 2018 WL 3611986, at *6

(S.D.N.Y. July 26, 2018) (same) (quoting *Lloyd v. Lee*, 570 F.Supp.2d 556, 566 (S.D.N.Y. 2008)); *Mercado v. Noem*, 800 F.Supp.3d 526, 573 (S.D.N.Y. 2025) (inadequate medical care, including "failure to provide one detainee blood pressure medication for the duration of his detention[, resulting] in dangerously high blood pressure[,] . . . constitutes an objective deprivation"). In analyzing "whether a medical need is sufficiently serious to be cognizable as a basis for a constitutional claim for deprivation of medical care, [courts] consider factors such as whether a reasonable doctor or patient would find the injury important and worthy of treatment, whether the medical condition significantly affects an individual's daily activities, and whether the illness or injury inflicts chronic and substantial pain." *Charles*, 925 F.3d at 86 (citing *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998)). "In most cases, the actual medical consequences that flow from the denial of care are highly relevant in determining whether the denial of treatment subjected the detainee to a significant risk of serious harm." *Id.* (citing *Smith v. Carpenter*, 316 F.3d 178, 187 (2d Cir. 2003)).

114. Second, to lay out a due process claim for inadequate medical care, the incarcerated individual must demonstrate that the jailers have exhibited "deliberate indifference" to their serious medical need. Deliberate indifference "can be established by either a subjective or objective standard," i.e., where the jailer "*knew* that failing to provide the complained of medical treatment would pose a substantial risk to [a detainee's] health" or where the jailer "*should have known* that failing to provide the omitted medical treatment would pose a substantial risk to the detainee's health." *Id.* at 87 (emphasis original) (internal quotation marks omitted)

(quoting *Darnell v. Pineiro*, 849 F.3d 17, 32 (2d Cir. 2017)). This prong is "described as the '*mens rea* prong.'" *Darnell*, 849 F.3d at 32. Thus, "medical malpractice . . . may rise to the level of deliberate indifference when it involves culpable recklessness, i.e., an act or a failure to act that evinces a conscious disregard of a substantial risk of serious harm." *Charles*, 925 F.3d at 87 (internal alteration and quotation marks omitted).

115. "Whether the state knew or should have known of the substantial risk of harm to the detainee is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence." *Id.* (citing *Farmer*, 511 U.S. at 842); *see also Hathaway v. Coughlin*, 37 F.3d 63, 67–69 (2d Cir. 1994). Thus, "[a] factfinder may conclude that a prison official knew of a substantial risk *from the very fact that the risk was obvious.*" *Charles*, 925 F.3d at 87 (emphasis added) (quoting *Farmer*, 511 U.S. at 842); *see also Mitchell v. Beard*, 492 F. App'x 230, 236 (3d Cir. 2012) ("A medical need is serious if it has been diagnosed by a physician as requiring treatment, or if it is so obvious that a lay person would easily recognize the necessity for a doctor's attention." (internal quotation marks omitted)).

116. Here, Respondents' deliberate indifference to Oscar's serious medical needs is plain on its face. Indeed, from the very moment ICE took Oscar into custody—when officers ignored his pleas for medical attention and instead "pinned him to the ground," *see* Shanahan et al., *supra* n. 38, leaving him "slumped", "bleeding from his neck and fading in and out of consciousness," Hogan, *supra* n. 42—Respondents have unequivocally ignored Oscar's obvious and serious medical need. Respondents' recklessness continued when they failed to bring Oscar to an

ambulance, despite NYPD officers' exhortations that they do so. *See* NYPDNews, *supra* n. 53. And it continues to this day, as they permit Oscar to languish in detention, with a partially numb face and a bullet lodged in his neck.

117. Based on the record before the Court, the sole effective remedy for these conditions-related constitutional violations is Oscar's immediate release on reasonable conditions. Anything less fails to adequately address Oscar's imminent risk of complete and irreversible harm.

## IV. BY FAILING TO PROVIDE OSCAR ADEQUATE MEDICAL CARE, RESPONDENTS HAVE VIOLATED THE REHABILITATION ACT AND THE ADMINISTRATIVE PROCEDURE ACT.

118. Respondents' failure to provide adequate medical care also runs afoul of the Rehabilitation Act, § 504, 29 U.S.C. § 794 *et seq.*, and the APA.

119. The APA accords judicial review to a person who is "suffering [a] legal wrong because of agency action," or who is "adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." 5 U.S.C. § 702.

120. The APA requires reviewing courts to vacate and set aside agency actions that are, among other things, "not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations," and "arbitrary and capricious." 5 U.S.C. §§ 706(2)(A), (C).

121. Agency action must be set aside if it is arbitrary, capricious, an abuse of discretion, or if it fails to meet statutory, procedural, or constitutional requirements. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 413-14 (1971).

122. For judicial review of an agency action under the APA, an agency action must be "final," meaning it marks the consummation of the agency's decision-making process and is an action by which rights or obligations have been determined, or from which legal consequences will flow. 5 U.S.C. § 704; *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997).

123. The Rehabilitation Act of 1973 prohibits executive agencies from excluding individuals on the basis of a disability.

124. And like all immigration detention facilities, MDC must comply with the requirements established by the Performance-Based National Detention Standards 2011 ("PBNDS" or "Detention Standards"). U.S. IMMIGR. & CUSTOMS ENF'T, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS 2011 (revised 2016),[63] § 4.8(II) ("[T]he facility shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), [and] Title II of the Americans with Disabilities Act of 1990[.]").[64] These standards require that Respondents meet minimum standards of medical care and disability access.

125. Respondents have violated both frameworks.

**A. <u>Respondents' Actions Violate the Rehabilitation Act</u>.**

126. To state a claim under the Rehabilitation Act, an individual must allege that they "(1) ha[ve] a disability, (2) [were] otherwise qualified to participate in a [] program; and (3) [were] denied the benefits of the program or [were] otherwise subject

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[63] https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf.

[64] Section 504 of the Rehabilitation Act prohibits organizations that receive financial assistance from any federal agency, like OCJ, from discriminating against qualified individuals with disabilities. *See* 29 U.S.C. § 794.

to discrimination because of [their] disability." *Hollihan v. Pa. Dep't of Corr.*, 159 F.Supp.3d 502, 509 (M.D. Pa. 2016) (quoting *Chambers ex rel. Chambers v. Sch. Dist. of Phila. Bd. of Educ.*, 587 F.3d 176, 189 (3d Cir. 2009)).

127. An individual with a disability is defined as "any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment." 28 C.F.R. § 39.103.

128. Oscar's open and unoperated bullet wound plainly qualifies as a disability.

129. Under the Rehabilitation Act, Respondents have an affirmative obligation to ensure individuals with disabilities, like Oscar, are provided "meaningful access" to programs and activities and to provide "reasonable accommodations" to ensure that access. *Berardelli v. Allied Servs. Inst. of Rehab. Med.*, 900 F.3d 104, 114-15 (3d Cir. 2018). A "program or activity conducted by [an] agency" includes "all aspects of the facility's operations that involve detainees." 29 U.S.C. § 794(a); PBNDS § 4.8(V)(A)(4). This includes "housing placements, medical care, safety and security protocols, food services, correspondence, visitation, grievance systems, transfers, and detainee programming and scheduled activities such as law and leisure libraries, religious services, educational or vocational classes, work programs, and recreation." PBNDS § 4.8(V)(A)(4).

130. Thus, in denying Oscar the medical care he plainly needs—specifically, removal of the bullet ICE lodged in his neck—Respondents have violated the Rehabilitation Act.

**B. Oscar's Conditions of Confinement Violate ICE's Own Regulations and the Administrative Procedure Act.**

131. The PBNDS require adequate medical care and reasonable accommodations for detainees with disabilities. *See* PBNDS §§ 4.3, 4.8. These Detention Standards comprise ICE's own rules, which govern the conditions of confinement at ICE detention facilities, including MDC. By adopting these Detention Standards, Respondents have recognized their responsibility to ensure basic access to healthcare and accommodations at MDC.

132. ICE's Detention Standards are the primary mechanism through which Respondents define their duty to ensure adequate medical care for individuals detained at MDC. The PBNDS require that Respondents provide detained individuals with, *inter alia*:

- a "continuum of health care services, including screening, prevention, health education, diagnosis and treatment," PBNDS § 4.3(II)(1);
- "[p]rescriptions and medications . . . ordered, dispensed and administered in a timely manner and as prescribed by a licensed health care professional," *id.* § 4.3(II)(20);
- "a written treatment plan, including access to health care and other care and supervision personnel, . . . developed and approved by the appropriate qualified licensed health care provider, in consultation with the patient, with periodic review," *id.*;
- "an equal opportunity to participate in, access, and enjoy the benefits of the facility's programs, services, and activities," *id.* § 4.8(I); and
- the "conven[ing] [of] a multidisciplinary team to assess the cases of detainees with communication and mobility impairments, detainees whose initial requests for accommodations have been denied, and complex cases," *id.* § 4.8(II)(11).

133. Upon information and belief, Respondents have failed to comply with these standards in their provision of care for Oscar. Respondents have failed to

provide Oscar with a written treatment plan and have failed to provide him updates on his diagnosis and treatment. Indeed, Oscar is not aware if he is even going to receive the surgery necessary to remove the bullet from his neck and, if so, when. Respondents have also denied Oscar an equal opportunity to participate in, access, and enjoy the benefits of the facility's programs, services, and activities, in light of their more basic failures to provide him the medical care necessary to restore his health.

134. As a consequence of these failures, Respondents have violated the Detention Standards. Respondents' disregard for these rules is "arbitrary, capricious" conduct in violation of the APA. *See* 5 U.S.C. § 706(2)(A).

## V. RESPONDENTS VIOLATED OSCAR'S DUE PROCESS AND STATUTORY RIGHTS BY FAILING TO CONDUCT AN INDIVIDUALIZED DETERMINATION AS TO WHETHER HIS DETENTION IS NECESSARY PRIOR TO THEIR ARREST.

135. Moreover, because ICE failed to comply with the required procedures governing detention under 8 U.S.C. § 1226(a), Oscar is entitled to immediate release.

136. A person's liberty cannot be infringed upon without "adequate procedural protections." *Zadvydas*, 533 U.S. at 690–91; *Hendricks*, 521 U.S. at 357; *see also Addington*, 441 U.S. at 425–27; *Rojas v. Almodovar*, No. 25-CV-7189-LJL, 2025 WL 3034183, at *8 (S.D.N.Y. Oct. 30, 2025) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)) ("The 'essence of due process is the requirement that a person in jeopardy of serious loss be given notice of the case against him and opportunity to meet it.' To hold otherwise would be to permit the Government to act arbitrarily and without consequence.").

137. Thus, as described *supra*, under § 1226, "[b]efore DHS may exercise its discretion to detain a person § 1226(a) and its implementing regulations require DHS officials to make an individualized custody determination. Moreover, the regulations implementing § 1226(a) mandate that DHS officers make an individualized determination as to the appropriateness of detention based on two factors: (1) whether the noncitizen is a danger to property or persons and (2) whether the noncitizen is likely to appear for any future proceeding." *Guzman Andujar*, 815 F.Supp.3d at 261 (internal citations omitted); *Gopie*, 2025 WL 3167130, at *2 ("*[B]efore* the Government may exercise such discretion to detain a person," Section 1226(a) and 8 C.F.R. 1236.1(c)(8) "require ICE officials to make an individualized custody determination.") (emphasis added); *Clarke v. U.S. Dep't of Homeland Sec.*, No. 25-CV-6773 (GRB), 2025 WL 3674471 (E.D.N.Y. Dec. 18, 2025) (same); *Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, at *3 (S.D.N.Y. Aug. 15, 2025) ("If ICE wishes to detain a noncitizen under the detention authority provided by 8 U.S.C. § 1226(a), ICE must allow the noncitizen to demonstrate to the satisfaction of the officer that release would not pose a danger to property or persons, and that the [noncitizen] is likely to appear for any future proceeding.") (internal quotation marks omitted); *J.U.*, 805 F.Supp.3d at 497 (Section 1226(a) requires an "individualized determination . . . made prior to or contemporaneously with the decision to detain."); *Artiga v. Genalo*, No. 25-CV-5208 (OEM), 2025 WL 2829434, at *9 (E.D.N.Y. Oct. 5, 2025) (same). And where ICE detains an individual properly subject to § 1226(a) without meaningfully complying with those procedural requirements, it impinges upon that individual's liberty interest. *See Guzman Andujar*, 815 F.Supp.3d at 261.

138. Here, Respondents failed to conduct an individualized determination as to whether detention was necessary until the day *after* Oscar's arrest: October 10, 2026. As such, his arrest and detention were illegal. *See* Ex. C, Notice of Custody Determination.

## VI. RELEASE IS THE PROPER REMEDY.

139. The appropriate remedy for Respondents' constitutional and statutory violations is immediate release, with an order that Oscar shall not be re-detained without notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, where Respondents have the burden of showing that his detention is justified based on a change of circumstances since Oscar's prior release, such that he now poses a danger or flight risk that cannot be mitigated by bond or alternatives to detention. *See, e.g.*, *O.F.B. v. Maldonado*, 810 F.Supp.3d 394, 405 (E.D.N.Y. 2025) (ordering immediate release and a pre-deprivation bond hearing before any future re-detention); *Hyppolite v. Noem*, 808 F.Supp.3d 474, 495 (E.D.N.Y. 2025) (same); *Ye v. Maldonado*, No. 25-CV-6417 (AMD), 2025 WL 3521298, at *9 (E.D.N.Y. Dec. 8, 2025) (same); *R.A.R.R. v. Almodovar*, 824 F.Supp.3d 299, 311 (E.D.N.Y. 2026) (same); *see also Tumba v. Francis*, 813 F.Supp.3d 394, 406 (S.D.N.Y. 2025) (quoting *Munaf v. Geren*, 553 U.S. 674, 693 (2008)) ("[T]he typical remedy for unlawful executive detention . . . is, of course, release.").

140. Because Oscar's detention was "unlawful from its inception," only immediate release can cure Respondents' constitutional and statutory violations. *Almonte v. Genalo*, No. CV 26-3633 (GRB), 2026 WL 2983349, at *10 (E.D.N.Y. Oct. 5, 2026) (granting habeas petition for release from custody based on unlawful ICE

detention and falsification of post arrest paperwork); *Hernández Lazo v. Noem*, 818 F.Supp.3d at 349; *see also Martinez*, 385 F.Supp.3d at 373 (finding that release is "the only commensurate and appropriate equitable remedy to even partially restore a petitioner" whose "arrest and detention [were] blatantly unlawful from the start"); *Limon Gonzalez*, 2026 WL 2546938, at *10 ("Immediate release is thus the appropriate remedy for Federal Respondents' 'detain first, justify later' approach to Petitioner's liberty, which mangles § 1226(a)'s regulatory framework and the basic demands of due process.").

## CLAIMS FOR RELIEF

### COUNT ONE: VIOLATION OF THE FOURTH AMENDMENT – UNLAWFUL SEIZURE

141. Oscar realleges and incorporates by reference the paragraphs above.

142. With limited exceptions, the Fourth Amendment prohibits Respondents from making an unlawful search and seizure.

143. Respondents violated the Fourth Amendment in their arrest and detention of Oscar without a warrant, without meeting an exception to the warrant requirement, and by using excessive force in the course of the arrest. Accordingly, Respondents' conduct violated Oscar's rights under the Fourth Amendment of the United States Constitution.

### COUNT TWO: VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – WARRANTLESS ARREST IN VIOLATION OF 8 U.S.C. § 1226(a)

144. Oscar realleges and incorporates by reference the paragraphs above.

145. 8 U.S.C. § 1226(a), and the implementing regulations at 8 C.F.R. §§ 236.1(b), 1236.1(b), authorizes ICE to issue a warrant for arrest only *after* a

noncitizen has been placed in removal proceedings. *See also, Abel*, 362 U.S. at 232 ("the authority to issue these administrative warrants" arises only "at the commencement of any proceedings . . . or at any time thereafter."); *see also Garcia Lanza*, 822 F.Supp.3d at 333 ("[T]he authority to issue administrative arrest warrants emanates from a pending removal proceeding – which is initiated by the issuance of an NTA . . . .").

146. To the extent the Respondents point only to a post-hoc Form I-200 warrant, courts around the country have found such belated warrants insufficient to justify an otherwise warrantless arrest. *See, e.g., Castañon Nava*, 806 F.Supp.3d at 841; *Gopie*, 2025 WL 3167130, at *1; *Ramirez Ovando*, 810 F.Supp.3d at 1227, 1234; *Parada Cruz*, 837 F.Supp.3d at 412.

147. In arresting Oscar without a warrant while no NTA was pending, Respondents violated binding requirements and Oscar's statutory rights.

**COUNT THREE: VIOLATION OF THE FOURTH AMENDMENT AND THE IMMIGRATION AND NATIONALITY ACT – WARRANTLESS ARREST IN VIOLATION OF 8 U.S.C. § 1357(a)(2)**

148. Oscar realleges and incorporates by reference the paragraphs above.

149. In the absence of a warrant, Respondents' ability to arrest and detain is curtailed. Under 8 U.S.C. § 1357(a)(2), an agent may make an immigration arrest without a warrant only if they have reason to believe that (1) the individual "is in the United States in violation of any [immigration] law or regulation," *and* (2) the individual is "likely to escape before a warrant can be obtained for his arrest." "Reason to believe" is the equivalent of probable cause. *Cantu*, 519 F.2d at 496; *see also Tejeda-Mata*, 626 F.2d at 725; *Au Yi Lau*, 445 F.2d at 222–23.

150. Respondents claim to have made a targeted arrest of Oscar and therefore lack any justification for approaching him without having first obtained a statutorily compliant warrant.

151. In addition, Oscar's attempt to remove himself and his son from an objectively life-threatening scenario created by ICE cannot justify ICE's warrantless arrest. Here, ICE itself intentionally created the conditions that would reasonably cause anyone to fear for their lives.

152. Respondents arrested Oscar without a warrant and without meeting Section 1357(a)(2)'s bifurcated inquiry, such that the arrest violated Oscar's statutory and Fourth Amendment rights.

**COUNT FOUR: VIOLATION OF THE FIFTH AMENDMENT AND THE IMMIGRATION AND NATIONALITY ACT – FAILURE TO CONDUCT AN INDIVIDUALIZED INQUIRY AS TO THE PROPRIETY OF DETENTION**

153. Oscar realleges and incorporates by reference the paragraphs above.

154. The Due Process Clause of the Fifth Amendment provides in relevant part that: "No person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

155. Under 8 U.S.C. § 1226 and a *Mathews v. Eldridge* analysis, at minimum, Respondents were required to provide individualized consideration before, or contemporaneous with, incarcerating Oscar in ICE detention. 424 U.S. 319 (1976); *see also Guzman Andujar*, 815 F.Supp.3d at 261; *Gopie*, 2025 WL 3167130, at *2; *Clarke*, 2025 WL 3674471, at *8; *Kelly*, 2025 WL 2381591, at *3; *J.U. v. Maldonado*, 805 F.Supp.3d at 497; *Artiga*, 2025 WL 2829434, at *9.

156. Respondents did not conduct an individualized review prior to or contemporaneous with detaining Oscar, and indeed, did not provide such a review at all. In justifying detention four hours after Oscar's arrest, Respondents pointed only to general factors applicable to all individuals subject to detention under § 1226(a).

157. The Court should find that Oscar's detention absent individualized consideration violates the Fifth Amendment's Due Process Clause as well as § 1226, and should therefore order immediate release.

**COUNT FIVE: VIOLATION OF THE *ACCARDI* DOCTRINE AND APA - FAILURE TO ADHERE TO USE OF FORCE GUIDELINES**

158. Oscar realleges and incorporates by reference the paragraphs above.

159. Under the APA, a reviewing court shall hold unlawful and set aside agency action found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

160. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA. *See Damus*, 313 F.Supp.3d at 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA."). To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, or a court may apply the policy itself and order relief consistent with the policy. *Id.* at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."); *Jimenez v. Cronen*, 317 F.Supp.3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

161. ICE's departure from its own policy to not use excessive and deadly force is arbitrary, capricious, and contrary to law under the APA and violates Oscar's due process rights.

162. To remedy ICE's violation of its own policy, this Court should review Oscar's custody resulting from the unlawful, excessive force and order his release accordingly. *See Jimenez*, 317 F.Supp.3d at 657 ("In these circumstances, it is most appropriate that the court exercise its equitable authority to remedy the violation of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released.").

**COUNT SIX: VIOLATION OF SUBSTANTIVE DUE PROCESS – UNLAWFUL USE OF DEADLY FORCE AND DELIBERATE INDIFFERENCE TO SERIOUS MEDICAL NEEDS**

163. Oscar realleges and incorporates by reference the paragraphs above.

164. Substantive due process "prevents the government from engaging in conduct that 'shocks the conscience[.]'" *Martinez*, 385 F.Supp.3d at 356 (quoting *Rochin*, 342 U.S. at 172 (1952)).

165. By its unreasonable use of deadly force, as well as by its failure to call for medical assistance after shooting Oscar in the neck, Respondents violated Oscar's substantive due process rights.

166. In addition, individuals in civil immigration detention are "afforded a right to be free from deliberate indifference to their serious medical needs." *Charles*, 925 F.3d at 85–86.

167. Oscar has a serious medical need arising from the bullet in his neck, which is also resulting in the loss of feeling in his face and a loss of hearing in his ear.

168. Respondents have showed deliberate indifference to Oscar's serious medical needs.

169. As a result, this Court should issue a writ directing Respondents to release Oscar from custody and, if release is not immediate, to provide him promptly with a full hospital examination and any appropriate follow up case. The Court should further enjoin Respondents from moving or transferring Oscar until such time as he has obtained complete and adequate medical care.

**COUNT SEVEN: VIOLATION OF THE REHABILITATION ACT AND APA – FAILURE TO PROVIDE ADEQUATE MEDICAL CARE**

170. Oscar realleges and incorporates by reference the paragraphs above.

171. Respondents' failure to provide adequate medical care also runs afoul of the Rehabilitation Act, § 504, 29 U.S.C. § 794 et seq., and the APA.

172. Oscar's open and unoperated bullet wound plainly qualifies as a disability because it limits his ability to participate in daily activities.

173. Upon information and belief, Respondents have failed to provide adequate medical care to Oscar from the moment of his arrest.

174. ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Oscar's due process rights.

175. Thus, in denying Oscar the medical care he plainly needs—specifically, removal of the bullet ICE lodged in his neck, rehabilitation, rest and psychological care—Respondents have violated the Rehabilitation Act, the *Accardi* doctrine and the APA.

**COUNT EIGHT: REQUEST FOR RELEASE UNDER *MAPP v. RENO***

176. Oscar realleges and incorporates by reference the paragraphs above.

177. This Court has the "inherent authority" to grant bail to habeas petitioners like Oscar. *See Mapp v. Reno,* 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when the petition has raised substantial claims and extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective").

178. Numerous courts within the Second Circuit have ordered the release of petitioners like Oscar in light of their extraordinary circumstances. *See, e.g., S.N.C. v. Sessions*, No. 18 Civ. 7680 (LGS), 2018 WL 6175902, at *6 (S.D.N.Y. Nov. 26, 2018) (ordering immediate release of petitioner pending consideration of her claim that her abrupt deportation would violate her due process right to an opportunity to be heard on her application); *Kiadii v. Sessions*, No. 18 Civ. 1584, at *3 (S.D.N.Y. Mar. 2, 2018) (ECF No. 9) (ordering immediate release when the petitioner presented evidence she may be a U.S. citizen and that "her health has deteriorated while in ICE's custody"); *D'Alessandro v. Mukasey*, No. 08 Civ. 914, 2009 WL 799957, at *3 (W.D.N.Y. Mar. 25, 2009) (ordering immediate release when petitioner had "a number of serious, potentially debilitating health problems"); *Fulton v. Mullin*, 181 F.4th 292, 294 (2d Cir. 2026) (ordering immediate release pending appeal for noncitizen with end stage renal failure).

179. ICE shot Oscar in the neck while he sat in his vehicle with his five-year-old son. ICE's use of excessive use of force, in addition to their unlawful, warrantless arrest, violates Oscar's constitutional rights. *See, e.g., Garcia v. Dutchess Cty.*, 43 F.Supp.3d 281, 293 (S.D.N.Y. 2014) (holding that even in cases of resistance to arrest,

"that conduct does not necessarily justify the later use of the Taser once Healy was on the floor") (internal quotations omitted), aff'd in part, dismissed in part sub nom. *Garcia v. Sistarenik*, 603 F. App'x 61 (2d Cir. 2015); *Landis v. Baker*, 297 F. App'x 453, 463 (6th Cir. 2008) ("The district court correctly concluded that the officers should have known that the gratuitous or excessive use of a taser would violate a clearly established constitutional right").

180. Oscar has experienced an exceptional set of consequences arising from a civil immigration arrest: he was shot in the neck and left bleeding on the ground in handcuffs while hearing his son yell out in fear that his father was killed. Since then, Oscar has been whisked from a hospital room into a van and traveled between ICE detention facilities in New Jersey and New York where he has not been informed of the plans for his continued medical treatment. He has been held separate from any other inmates in detention and is unable to contact his family; he is especially worried about his son's mental health and well-being in the aftermath of the traumatic experience.

181. Oscar was made aware that he requires additional surgeries to remove the bullet in his neck, however he has not been provided any information from Respondents on when or whether this vital care will occur and upon information and belief Oscar is at risk of imminent harm from his untreated injuries.

182. As a result, release in accordance with *Mapp* is necessary to make the remedies this habeas effective.

## PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents from transferring the custody of Petitioner outside the jurisdiction of the U.S. District Court for the Eastern District of New York pending the resolution of this case;

c. Issue an Order directing Respondents to show cause why this Petition should not be granted within three days, 28 USC § 2243;

d. Issue an Order for Petitioner's immediate interim release in accordance with *Mapp v. Reno* in light of his serious medical concerns;

e. Grant Petitioner a writ of habeas corpus ordering his immediate release from custody in light of Respondents' statutory and constitutional violations and enjoining Respondents from re-detaining Petitioner without prior notice and an opportunity to be heard at a pre-deprivation bond hearing before a neutral decisionmaker, at which the government bears the burden to establish by clear and convincing evidence that Petitioner's re-detention is justified due to a risk of present danger to the community or flight, based on a change of circumstances following Petitioner's release, which cannot be mitigated by bond or alternatives to detention;

f. In the alternative, issue a writ of habeas corpus and conduct an individualized bond hearing, at which the government bears the burden to establish by clear and convincing evidence that Petitioner poses a present danger to the community or a flight risk which cannot be mitigated by bond or alternatives to detention, and at which the Court

considers Petitioner's ability to pay bond and alternatives to detention when assessing dangerousness and flight risk and when setting a bond amount;

g. Retain jurisdiction over this matter to order appropriate remedies should Respondents fail to comply with this Court's order;

h. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any other basis justified by law; and

i. Grant any other further relief as the Court deems just and proper.

Dated: October 14, 2026

Respectfully submitted,

/s/ *Perry Hall McAninch*

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*Counsel for Petitioner*

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of Oscar Belgal because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 14, 2026

Respectfully submitted,

/s/ *Perry Hall McAninch*

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