

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LUIS HUMBERTO TREJO MORENO,

Petitioner,

v.

William JOYCE, in his official capacity as District Director of New York, Immigration and Customs Enforcement; Kristi NOEM in her official capacity as Secretary of Homeland Security; Pam BONDI, in her official capacity as Attorney General.

Respondents.

Case No.

**PETITION FOR
WRIT OF HABEAS
CORPUS**

INTRODUCTION

Petitioner Luis Humberto Trejo Moreno is a father of five with chronic health problems whom Respondents suddenly detained as he left his immigration court hearing in Manhattan on June 16, 2025—even though an Immigration Judge had *denied* Respondents’ motion to dismiss Mr. Trejo’s removal proceedings. Mr. Trejo, an asylum seeker from Ecuador, has provided no cause for Respondents to revisit his custody status. Since arriving in the U.S., he has attended immigration court as directed; applied for asylum; and obtained employment authorization. His sudden detention and separation from his family, including three minor children, was unlawful. Rather than undertaking any individualized analysis of his custody, Respondents detained him as part of a nationwide campaign to first move to dismiss the proceedings of certain individuals present in the U.S. for under two years and then to detain them, irrespective of whether the motion to dismiss is granted. Mr. Trejo’s detention as part of this campaign is unlawful and he brings this petition seeking his immediate release.

PARTIES

1. Petitioner Luis Humberto Trejo Moreno is citizen of Ecuador who lives in New York City. He attended an immigration court hearing in Manhattan on June 16, 2025 and was detained by Respondents as he left court.

2. Respondent William Joyce is named in his official capacity as the Acting Field Office Director of the New York Field Office for Immigration and Customs Enforcement (“ICE”) within the United States Department of Homeland Security. In this capacity, he is also responsible for the administration of immigration laws and the execution of detention and removal determinations and is a legal custodian of Petitioner. Respondent Joyce’s address is New York ICE Field Office Director, 26 Federal Plaza, 7th Floor, New York, New York 10278.

3. Respondent Kristi Noem is named in her official capacity as the Secretary of Homeland Security in the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a) (2007); routinely transacts business in the Eastern District of New York; is legally responsible for pursuing any effort to remove the Petitioner; and as such is a legal custodian of the Petitioner. Respondent Noem’s address is U.S. Department of Homeland Security, 800 K Street N.W. #1000, Washington, District of Columbia 20528.

4. Respondent Pam Bondi is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for the administration of the immigration laws as exercised by the Executive Office for Immigration Review (“EOIR”), pursuant to 8 U.S.C. § 1103(g). She routinely transacts business in the Eastern District of New York and is legally responsible for administering Petitioner’s removal and custody proceedings and for the standards used in those proceedings. As such, she is the custodian of Petitioner. Respondent Bondi’s office

is located at the United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, DC 20530.

JURISDICTION

5. The federal district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Petitioner was detained by Respondents on January 13, 2025.

6. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241 (habeas); 28 U.S.C. § 1331 (federal question); and Article I, § 9, cl. 2 of the United States Constitution. This Court has authority to grant declaratory and injunctive relief. 28 U.S.C. §§ 2201, 2202. The Court has additional remedial authority under the All Writs Act, 28 U.S.C. § 1651 and the Declaratory Judgment Act, 28 U.S.C. § 2201.

VENUE

7. Venue is proper in this Court because Mr. Trejo is currently detained in the Southern District of New York.

SPECIFIC FACTS ABOUT PETITIONER

8. Mr. Trejo is a citizen of Ecuador who has resided in the U.S. since October 2023. Upon entry, he was detained; charged with removability under 8 U.S.C. § 1182(a)(6)(A)(i); and released from custody on his own recognizance on October 6, 2023. *See* Exh. B to Austin Decl. (release order). As part of his release, Respondents necessarily determined that he posed neither a danger nor a flight risk.

9. His removal proceedings were docketed at the New York Immigration Court in Manhattan. Mr. Trejo filed a timely application for asylum and attended court as directed.

10. Mr. Trejo resides in Queens, New York with his partner and three minor children, all of whom attend New York City schools. Since obtaining employment authorization, he has worked at the Brooklyn Navy Yard. He suffers from hypertension which requires regular monitoring and medication to manage.

11. On information and belief, Mr. Trejo has no criminal history in any country.

12. On June 16, Mr. Trejo attended a master calendar hearing in Manhattan. Respondents made an oral motion to dismiss his proceedings for the purpose of placing him into expedited removal. The Immigration Judge (IJ) denied the motion in a written decision, citing DHS's failure to comply with regulations governing motions, including by ascertaining Mr. Trejo's position on the motion and providing him a chance to reply. The IJ further noted that Mr. Trejo was already subject to expedited removal prior to the expansion of expedited removal in January 2025, and hence "DHS has not demonstrated that any circumstances changed after it issued the NTA." Finally, the IJ noted that Mr. Trejo had filed an application for relief and "has an interest in the Court adjudicating [his] applications in these proceedings." *See* Exh. A to Austin Decl. (IJ Order). The IJ set a next court date in December 2025.

13. Nevertheless, as Mr. Trejo left the courtroom, he was surrounded, handcuffed and detained by plainclothes agents.

14. On information and belief, Respondents have no individualized basis for their re-detention of Mr. Trejo, as there is no change in the individual factors in his case.

CAMPAIGN OF DETENTIONS

15. On or about May 20, 2025, Respondents began a nationwide campaign to seek dismissal of removal proceedings for people present in the U.S. for under two years and to detain individuals immediately after their appearance in immigration court.

16. In New York City, this campaign has led to a large number of detentions in all three Manhattan immigration courthouses. The detentions are not individualized: on information and belief, Respondents create lists of individuals to be detained and then proceed to detain every single one, even in the face of protests such as that the person has minor children or medical conditions or cannot lawfully be subject to expedited removal.

17. Once detained, New Yorkers targeted by this campaign are held incommunicado for several days. Family members often not hear from them for days and the ICE locator, an online portal, often does not reflect their location for several days or reflects a detention center at which (according to facility staff there) detainees are not actually present. Reporting has indicated that hundreds of people are being held, sometimes for several days, in holding cells in Manhattan federal buildings intended as temporary holding areas for a much smaller number of people. *See* Exh. C to Austin Decl. (attaching Luis Ferre Sadurni, *Inside a Courthouse, Chaos and Tears as Trump Accelerates Deportations*, N.Y. Times, June 12, 2025). These conditions are extremely hot, and individuals detained do not have access to beds, regular meals, or communication with loved ones or counsel.

18. In some cases of those with ongoing proceedings, ICE swiftly moves to transfer the venue of the removal case to the eventual place of detention, often in Texas or Louisiana, such that custody and removal proceedings are then governed by new law.

LEGAL FRAMEWORK – REMOVAL PROCEEDINGS

19. The INA provides for removal proceedings to be the “sole and exclusive” procedures for removing people from the United States, subject to a few narrow exceptions. 8 U.S.C. 1229a. Section 1229a(a)(3) states that “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be

admitted to the United States or, if the alien has been so admitted, removed from the United States.”¹

20. “Jurisdiction vests, and proceedings before an Immigration Judge, when a charging document is filed with the Immigration Court by the Service.” 8 C.F.R. § 1003.14(a). DHS is limited by regulation in when it can move to dismiss a removal case once commenced. *See* 8 C.F.R. § 239.2(a).

21. Mr. Trejo is currently in removal proceedings under section 1229a. His proceedings remain pending, with a next court date in .

22. Certain noncitizens may be ordered removed by an immigration officer under the expedited removal procedures described in 8 U.S.C. 1225(b). Expedited removal is a one- or two-stage process: the first is inspection by an immigration officer; the second, where applicable, is a credible fear interview by an asylum officer. For an individual who applies for admission at a port of entry, the immigration officer must first determine if the individual is a noncitizen who is inadmissible either because they have engaged in fraud or lack valid entry documents. *See* 8 U.S.C. § 1225(b)(1)(A)(i), (ii) (citing 8 U.S.C. § 1182(a)(6)(C), (a)(7)). If an individual claims to be a U.S. citizen, lawful permanent resident, or refugee, or to have been granted asylum, then the individual is entitled to limited additional review. *See* 8 U.S.C. § 1225(b)(1)(C); 8 C.F.R. § 235.3(b)(5). Otherwise, if the officer concludes that the individual is inadmissible under either ground, the officer “shall” order the individual removed “without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution.” 8

¹ “Attorney General” in Section 1254a now refers to the Secretary of the Department of Homeland Security. *See* 8 U.S.C. § 1103; 6 U.S.C. § 557.

U.S.C. § 1225(b)(1)(A)(i). At any time during the process, the officer may allow the person to withdraw his or her application for admission and leave the country. 8 U.S.C. § 1225(a)(4).

LEGAL FRAMEWORK – DETENTION

23. Congress has authorized civil detention of noncitizens in removal proceedings for specific, non-punitive purposes. *See Jennings v. Rodriguez*, 138 S.Ct. 830, 833 (2018); *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). For individuals who are arriving in the U.S. or who are subject to expedited removal because they have been present under two years and meet certain other requirements, mandatory detention is authorized by 8 U.S.C. § 1225(b)(2). For individuals who are in removal proceedings following entry without inspection and who, like Mr. Trejo, have no criminal history, detention is authorized by 8 U.S.C. § 1226(a). Individuals with a final order of removal may be subject to mandatory or discretionary detention pursuant to 8 U.S.C. § 1231(a).

24. Although civil immigration detention is authorized by statute, that detention serves only two legitimate purposes: mitigating flight risk and preventing danger to the community. *See Zadvydas*, 533 U.S. at 690; *Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020).

25. DHS makes initial custody determinations pursuant to 8 C.F.R. § 1236.1(c)(8), which requires that noncitizens be released from custody *only* “if they demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.” *See Velesaca v. Decker*, 458 F. Supp. 3d 224, 241 (S.D.N.Y. 2020) (“Defendants do not dispute, that 8 U.S.C. § 1226(a) and its implementing regulations require ICE officials to make an individualized custody determination”).

26. A person’s liberty cannot be infringed upon without “adequate procedural protections.” *Zadvydas*, 533 U.S. at 690-91. Revocation of conditional release from confinement, even civil

immigration confinement, infringes on a protected liberty interest. The liberty interest in even conditional release is well-established in the context of parole and probation. *Morrissey v. Brewer*, 408 U.S. 471, 482 (1972); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973). Noncitizens also have a liberty interest in continued freedom from civil immigration confinement. *See, e.g., Lopez v. Sessions*, No. 18 CIV. 4189 (RWS), 2018 WL 2932726, at *12 (S.D.N.Y. June 12, 2018) (“Petitioner’s re-detention, without prior notice, a showing of changed circumstances, or a meaningful opportunity to respond, does not satisfy the procedural requirements of the Fifth Amendment.”).

27. The Second Circuit has held that the *Mathews v. Eldridge* balancing test is applicable to determine the adequacy of process in the context of civil immigration confinement. *Velasco Lopez*, 978 F.3d at 851 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)). This test requires process sufficient to mitigate the risk of erroneous deprivation. At a minimum, in the context of revocation of civil release, “an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing.” *Villiers v. Decker*, 31 F.4th 825, 833 (2d Cir. 2022).

28. In May 2025, the Board of Immigration Appeals held that “an applicant for admission who is arrested and detained without a warrant while arriving in the United States, whether or not at a port of entry, and subsequently placed in removal proceedings is detained under section 235(b) of the INA, 8 U.S.C. § 1225(b), and is ineligible for any subsequent release on bond under section 236(a) of the INA, 8 U.S.C. § 1226(a).” *Matter of Q. Li*, 29 I. & N. Dec. 66, 69 (BIA 2025). This was a change from decades of previous case law, which held that individuals who entered the country without inspection and were placed into removal proceedings were

detained pursuant to 8 U.S.C. § 1226(a) and eligible for bond. As a result, many individuals who might have qualified for release on bond now no longer do.

CLAIMS FOR RELIEF

COUNT ONE
VIOLATION OF THE DUE PROCESS CLAUSE
OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

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

30. The Due Process Clause of the Fifth Amendment forbids the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. *See generally Reno v. Flores*, 507 U.S. 292 (1993); *Zadvydas v. Davis*, 533 U.S. 678 (2001); *Demore v. Kim*, 538 U.S. 510 (2003).

31. Petitioner's detention violates the Due Process Clause because no change in Petitioner's case compels a change in his custody status. He was already determined not to pose danger or flight risk and no change occurred except in his favor—he filed a timely asylum application, attended court as directed, and obtained employment authorization. He has no criminal history. In re-detaining him, Respondents have offered no indication that any permissible statutory purpose is served. His detention is not rationally related to any immigration purpose.

32. Moreover, he was not accorded sufficient process prior to his sudden re-detention by ICE. He received neither notice nor an opportunity to be heard.

33. Respondents are likely to now contend in administrative proceedings that Mr. Trejo is ineligible even for bond under *Matter of Q Li*. Mandatory detention without access to a bond hearing would violate his right to due process.

COUNT TWO
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT

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

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

36. Respondents' decision to detain Mr. Trejo and their coordinated campaign and policy of detaining individuals present in the U.S. for under two years, irrespective of the individual circumstances in their case, is arbitrary and capricious.

37. Moreover, an action is an abuse of discretion if the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 658 (2007) (*quoting Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). An agency must articulate "a satisfactory explanation" for its action, "including a rational connection between the facts found and the choice made." *Dep't of Com. v. New York*, 139 S. Ct. 2551, 2569 (2019) (citation omitted).

38. By detaining Petitioner without any consideration of his individualized facts and circumstances, Respondents have violated the APA.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully requests that this Court:

1. Assume jurisdiction over this matter;
2. Order Respondents to show cause why the writ should not be granted within three days, and set a hearing on this Petition within five days of the return, as required by 28 U.S.C.

§ 2243;

3. Declare that Petitioner's detention violates the Immigration and Nationality Act and implementing regulations;
4. Declare that Petitioner's detention violates the Due Process Clause of the Fifth Amendment;
5. Declare that Respondents' actions violate the Administrative Procedure Act;
6. Enjoin Petitioner's transfer out of the New York City area;
7. Grant a writ of habeas corpus ordering Respondents to immediately release Petitioner from custody;
8. Award reasonable attorney's fees and costs pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
9. Grant such further relief as this Court deems just and proper.

Dated: June 16, 2025

/s/ Paige Austin
Paige Austin
Make the Road New York
301 Grove St.
Brooklyn, NY 11237
Tel. (718) 418-7690
Paige.Austin@maketheroadny.org

CERTIFICATE OF SERVICE

I certify that on June 16, 2025, I electronically filed the attached the foregoing First Amended Petition for Writ of Habeas Corpus and accompanying Exhibits with the Clerk of the Court for the United States District Court for the Southern District of New York using the CM/ECF system. Service will therefore be effected by the CM/ECF system.

/s/ Paige Austin

Paige Austin

Make the Road New York

301 Grove St.

Brooklyn, NY

Tel.: (718) 565-8500 ext. 4139

Fax: (866) 420-9169

Email: paige.austin@maketheroadny.org

Attorney for Petitioner