UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Dennis Alexander MINARCAJA CONCHA, Petitioner, v. TODD LYONS, field office director for U.S. Immigration and Customs Enforcement (ICE) in New York, Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General, in their official capacities, Respondents.	Case No. 2:25-cv-6695 **VERIFIED PETITION FOR WRIT HABEAS CORPUS**

INTRODUCTION

1. Dennis Alexander Minarcaja Concha, is a twenty-three-year-old from Ecuador. He entered the United States without inspection from Ecuador in July 13, 2022. Petitioner was detained by immigration officials and was issued an Notice to Appear on July 18, 2022. (Exhibit A).

2. On July 19, 2022, Petitioner was ordered released on his own recognizance. (Exhibit B).

3. Undocumented, he took up residence in Elmhurst, NY. Like many immigrants, he found a job in construction.

4. Petitioner filed for Asylum, and on January 3, 2024 appeared for a biometrics appointment in connection with his asylum application. (Exhibit C).

5. On August 30, 2024 Petitioner was granted an Employment Authorization Document,

by USCIS, which is valid through August 29, 2029. The fact that Petitioner was eligible for his work permit, was due to his application for asylum.

6. Petitioner, regularly appeared and was in full compliance with all ICE supervision monthly appointments, and appeared at all immigration hearings whenever he was scheduled.

7. Petitioner resides at [redacted], with his wife Vanessa Calapina, and their daughter named [redacted] Minarcaja.

8. Today, December 3, 2025, Petitioner appeared for a supervision appointment at 6851 Jericho Tpke in Syosset, New York (Nassau County - EDNY), and **without warning or apparent justification,** he was detained by ICE inside the building.

9. Upon information and belief Petitioner was detained without a warrant. His current whereabout remain unknown, but I suspect he was taken for processing at the EDNY-- Islip.

10. Petitioner has an upcoming Individual hearing set for November 12, 2026 at 1:00 PM with Judge James Loprest, JR. at 26 Federal Plaza.

11. Upon information and belief, as of the time of the filing of this Habeas Petition, Petitioner remains in custody at the EDNY in Central Islip NY.

12. Petitioner's detention was unlawful and unwarranted, since his legal status has not changed from the time he entered the United States on July 13, 2022. On the contrary since Petitioner was ordered released on his own recognizance, on July 19, 2022, he applied for Asylum, and was granted Employment Authorization Document (EAD), which is set to expire only on August 29, 2029.

13. Furthermore, the immigration authorities failed to conduct an individual assessment, or "any" process of Petitioner, Mr. Dennis Alexander Minarcaja Concha, prior or contemporaneously to his detention.

14. Pursuant to 28 U.S.C. § 2243, Mr. Dennis Alexander Minarcaja Concha, requests that the Court issue an Order to Show Cause directing ICE to file a return "within three days[,] unless for good cause additional time, not exceeding twenty days, is allowed," justifying its unexplained decision to detain Mr. Dennis Alexander Minarcaja Concha, in apparent excess of statutory authority.

15. Accordingly, to vindicate Petitioner's constitutional rights, this Court should grant the instant petition for a writ of Habeas Corpus.

JURISDICTION

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

17. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause).

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

VENUE

19. Venue is proper because—on information and belief—Petitioner is detained at, a detention Center in or near Central Islip, which is within the jurisdiction of this Court.

PARTIES

20. Petitioner is an Ecuadoran national who has lived in the United States without authorization since 2022. At the time of his recent arrest by ICE, he was residing in Elmhurst New York, and employed in construction.

21. Todd Lyons, is the Acting Director of ICE's New York Field Office. In his official capacity, he is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout the New York State, including Nassau County. He therefore has custody over Petitioner, in that he can order his release from ICE custody.

22. Respondent Kristi Noem is the Secretary of DHS, which is ICE's parent agency. In her official capacity, she oversees and directs the activities of ICE, including its detention operations in New York and elsewhere. She therefore has constructive custody of Petitioner, in that she can direct ICE to release him from custody.

23. Respondent Pamela Bondi is the Attorney General. In her official capacity, she is charged with making determinations as to removability, asylum eligibility, and immigration custody, all of which are binding on DHS and its components. She therefore has constructive custody of Petitioner, in that she has the capacity to compel ICE to release him.

STATEMENT OF FACTS

24. Petitioner, then a teenager, entered the United States through the southern border in July 13, 2022, after fleeing difficult conditions in Ecuador. He settled in Elmhurst New York, where he worked steadily in construction and built a life rooted in hard work and responsibility. Petitioner has lived a quiet, law-abiding life in the United States for over three years.

25. Today, December 3, 2025, Petitioner appeared for a regular supervision appointment, of which he has been in cimpliance, at 6851 Jericho Tpke in Syosset, New York (Nassau County - EDNY), and **without warning or apparent justification,** he was detained inside the building, by ICE.

26. Petitioner was taken into custody, on information and belief without a warrant.

27. Mr. Dennis Alexander Minarcaja Concha, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in New York. Cf., e.g., *Ozturk v. Hyde,* 136 F.4th 382 (2d Cir. 2025) (attempted transfer to ICE detention center in Louisiana); *Mahdawi v. Trump,* 136 F.4th 443 (2d Cir. 2025) (same).

LEGAL FRAMEWORK

28. As the Supreme Court has repeatedly instructed, freedom "from government custody, detention, or other forms of physical restraint" is at "the heart" of what the Due Process Clause protects. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001); see also *Foucha v. Louisiana,* 504 U.S. 71, 80 (1992) ("Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action.").

29. This is particularly true in the context of civil detention. See, e.g., *Addington v. Texas,* 441 U.S. 418, 425 (1979) ("This Court repeatedly has recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection."); *Kansas v. Hendricks,* 521 U.S. 346, (1997) (requiring "strict procedural safeguards" to justify involuntary civil commitment of certain sex offenders); *Foucha,* 504 U.S. at 81-82, 86 (holding unconstitutional a state civil commitment "statute that place[d] the burden on the detainee to prove that he is not dangerous").

A. DHS is Detaining Petitioner in Violation of His <u>Procedural</u> Due Process

30. "[C]ivil immigration detention is typically justified only when a noncitizen presents a risk of flight or danger to the community." *J.A.E.M. v. Wofford,* No. 25 Civ. 1380 (KES), 2025 WL 3013377, at *3 (E.D. Cal. Oct. 27, 2025) (citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001);

Padilla v. ICE, 704 F. Supp. 3d 1163, 1172 (W.D. Wash. 2023)). "A protected liberty interest may arise from a conditional release from physical restraint. Even when a statute allows the government to arrest and detain an individual, a protected liberty interest under the Due Process Clause may entitle the individual to procedural protections not found in the statute." *Id.* (citation omitted) (citing *Young v. Harper*, 520 U.S. 143, 147–49 (1997)).

31. "Due process 'is a flexible concept that varies with the particular situation.' The procedural protections required in a given situation are evaluated using the *Mathews v. Eldridge* factors." Id. at *6 (quoting *Zinermon v. Burch*, 494 U.S. 113, 127 (1990), which in turn cites 424 U.S. 319, 335 (1976)).

32. To determine whether a civil detention violates a detainee's procedural due process rights, courts apply the three-part test set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976). *See Velasco Lopez v. Decker,* 978 F.3d 842, 851 (2d Cir. 2020) (applying Mathews test to a challenge involving discretionary noncitizen detention).

33. Pursuant to Mathews, courts weigh the following three factors: (1) "the private interest that will be affected by the official action"; (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards"; and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews,* 424 U.S. at 335.

34. The first Mathews factor requires consideration of the private interest affected by Respondents' detention of Petitioner. This factor weighs heavily in Petitioner's favor because Mr. Dennis Alexander Minarcaja Concha's, interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004).

35. As the court stated in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), "the most significant liberty interest there is—the interest in being free from imprisonment" (quoting *Velasco Lopez v. Decker*, 978 F.3d 842, 851 (2d cir. 2020)).

36. The second Mathews factor requires courts to assess whether the challenged procedure creates a risk of erroneous deprivation of individuals' private rights and the degree to which alternative procedures could ameliorate these risks.

37. There is very little doubt that the second prong of Mathews favors Petitioner, as the challenged detention, overwhelmingly creates a risk of erroneous deprivation of individuals' private rights.

38. **The Court** stated in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), that "**before** the Government may exercise such discretion to detain a person, §1226(a) and its implementation regulations **require ICE officials to make an individualized custody determination**". (emphasis added) (quoting *Velesaca v. Wolf,* No. 20 Civ. 2153, 2020 WL 7973940 (2d cir. Oct. 13, 2020). (quotation marks and citation omitted)

39. As in *Carlos Javier Lopez Benitez v. Francis,* **here too, no individualized determination regarding the factors, such as his high flight risk or dangerousness occurred** contemporaneously or before ICE arrested Mr. Dennis Alexander Minarcaja Concha's, on June 19 2022.

40. Regarding the value of additional safeguards, the court in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 stated that "[a] person's liberty cannot be abridged without adequate procedural protections".

41. The third Matthews factor, the Government's interest, also weighs in favor of granting this petition. The Government's only legitimate interest at stake is its interest in ensuring

that people facing removal do not endanger the public or abscond during the pendency of their removal cases.

42. In our case, it is clear that Petitioner does not endanger the public, as upon information and belief, he has no criminal record. Moreover, Petitioner, regularly appeared and is in full compliance with all ICE supervision, monthly appointments and appeared at all immigration hearings whenever he was scheduled.

43. Mr. Dennis Alexander Minarcaja Concha's detention was therefore unlawful from its inception, according to the three-part test set forth in *Mathews v. Eldridge* and cannot be justified by any post-hoc filing of an NTA.

44. **Lastly,** the INA provides that "[*o*]*n a warrant issued by the Attorney General*, an alien may be arrested and detained pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a) (emphasis added). Thus, "the issuance of a warrant is a 'necessary condition' to justify discretionary detention under the statute." *Astudillo v. Hyde*, No. 25 Civ. 551 (JJM), 2025 WL 3035083, at *4 (D.R.I. Oct. 30, 2025) (quoting *Chogllo Chafla v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at *11 (D. Me. Sep. 22, 2025)).

45. "Because the Government failed to obtain a warrant as required by statute, [Petitioner] may not be detained and must be immediately released." *Id.*; *accord Chiliquinga Yumbillo v. Stamper*, No. 25 Civ. 479 (SDN), 2025 WL 2783642, at *5 (D. Me. Sep. 30, 2025) (quoting *Chogllo Chafla, supra*); *J.A.C.P. v. Wofford*, No. 25 Civ. 1354 (KES), 2025 WL 3013328, at *8 (E.D. Cal. Oct. 27, 2025) (same).

46. Upon information and belief, ICE did not issue Petitioner a warrant prior to his arrest. Mr. Dennis Alexander Minarcaja Concha's detention was therefore unlawful from its inception and cannot be justified by any post-hoc filing of an NTA.

B. Continued Detention Of Petitioner Violates His Substantive Due Process Right To Be Free From Arbitrary Detention.

47.. At a bare minimum, "the Due Process Clause includes protection against unlawful or arbitrary personal restraint or detention." *Zadvydas,* 533 U.S. at 718 (Kennedy, J., dissenting) (emphasis added).

48. To meet the strictures of due process, Mr. Dennis Alexander Minarcaja Concha's, detention must "bear[] a reasonable relation to [the] purpose[s]" of civil immigration detention, which the Supreme Court has identified as mitigating flight risk and mitigating danger to the community. *See Zadvydas,* 533 U.S. at 690 (quoting *Jackson v. Indiana,* 406 U.S. 715 (1972)) (quotation marks omitted).

49. Respondents will not be able to show that Petitioner's detention without bond is necessary to prevent flight or to mitigate danger.

FIRST CLAIM FOR RELIEF
VIOLATION OF PROCEDURAL DUE PROCESS

50. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

51. The Due Process Clause of the Fifth Amendment protects the procedural rights of all persons in the United States, including noncitizens, from unlawful civil detention. Applying the three-part test set forth in *Mathews v. Eldridge,* 424 U.S. 319 (1976), and in *Velasco Lopez v. Decker,* 978 F.3d 842, 851 (2d Cir. 2020), Petitioner's has been deprived of his right to procedural due process, and he is therefore entitled to immediate release.

52. Moreover, according to the Court, in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), before the Government can exercise the discretion to detain even a non-citizen, §1226(a) and its implementation regulations require immigration officials to make an

individualized custody determination, as to the factors such as his high flight risk or dangerousness occurred before ICE arrests an alien.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right to Due Process

53. Petitioner hereby repeats and realleges all preceding allegations in the instant Petition as if fully set forth herein.

54. The Due Process Clause of the Fifth Amendment protects the substantive right of all persons in the United States, including noncitizens, to be free from unjustified deprivations of physical liberty. U.S. CONST. amend. V; see generally *Reno v. Flores,* 507 U.S. 292 (1993).

55. "[G]overnment detention violates the [Due Process Clause] unless the detention is ordered in a criminal proceeding with adequate procedural protections, or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." *Zadvydas,* 533 U.S. at 690 (quotation marks and citations omitted).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court:

(1) Assume jurisdiction over his petition;

(2) Enjoin Respondents from transferring Petitioner outside of this judicial district;

(3) Direct Respondents to show cause within three days why the Petition should not be granted;

(4) Order Petitioner's immediate release during the pendency of these proceedings;

(5) Declare Petitioner's ongoing detention to be violative of the Due Process Clause of the Fifth Amendment;

(6) Issue a writ of habeas corpus directing Respondents to release Petitioner;

(7) Award reasonable attorney's fees and costs to Petitioner; and

(8) Provide such other relief as the Court deems just and proper.

Dated: December 3, 2025
Queens, New York

/s/ Avi Silberberg, Esq.
Avi Silberberg, Esquire

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

I represent Petitioner, Mr. Dennis Alexander Minarcaja Concha, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 3th day of December, 2025.

/s/ Avi Silberberg