UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Victor Hugo Pesantez Castro, Petitioner, v. Raul Maldonado Jr. Warden Metropolitan Detention Center, Brooklyn, NY 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 1:25-cv-6844 **VERIFIED PETITION FOR WRIT HABEAS CORPUS** Agency No.: A-[redacted]

INTRODUCTION

1. Victor Hugo Pesantez Castro, is a thirty-five-year-old from Ecuador. Petitioner entered the United States without inspection from Ecuador, on or about August 2021,where he was blessed with a son [redacted] who is a citizen, born in the United States.

2. Undocumented, Petitioner took up residence in Uniondale, New York. Like many immigrants, he found a job in construction.

3. Petitioner resides at [redacted], with his wife and United States citizen son ([redacted] and daughter ([redacted]

4. On November 19, 2025, Petitioner was on his way to work via train, when he was

approached by two individuals asking if he recognized the person in the picture they showed him. At the same moment, while they were speaking to him, **without warning or apparent justification,** he was detained by Immigration and Customs Enforcement ("ICE") agents, without "any" process at all.

5. Upon information and belief Petitioner was detained without a warrant.

6. Moreover, Petitioner was not previously apprehended or processed by immigration. Therefore, Petitioner was not in removal proceedings at the time of his arrest, and he was illegally detained without being served a Notice to Appear ("NTA") before or even at the time of his arrest.

7. Upon information and belief (the source being his aunt), ICE failed to conduct an individual assessment, or "any" process of Petitioner, prior or contemporaneously to his detention. Further, Petitioner was not given any explanation of why he was being arrested or detained.

8. Moreover, upon information and belief, Petitioner was not afforded "notice" of his detention, to allow him a chance to be heard regarding his detention, prior to snatching Petitioner's freedom from him.

9. Upon information and belief, as of the time of the filing of this Habeas Petition, Petitioner is currently detained at currently detained at the Brooklyn MDC, located at 80-29th Street Brooklyn NY 11232.

10. Petitioner's detention was unlawful and unwarranted, since his legal status has not changed from the time he entered the United States on September 17, 2019.

11. Pursuant to 28 U.S.C. § 2243, Mr. Victor Hugo Pesantez Castro, requests that the Court issue an Order to Show Cause directing ICE to file a return "within three days…", justifying its unexplained decision to detain Petitioner, in apparent excess of statutory authority.

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

JURISDICTION

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

13. 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).

14. 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

15. 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

16. Petitioner is an Ecuadoran national who has lived in the United States since on or about August 2021. At the time of his unlawful and unexpected arrest by ICE, he was residing in Uniondale NY, and employed in construction.

17. Raul Maldonado Jr. Warden Metropolitan Detention Center, Brooklyn.

18. 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.

19. 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.

20. 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

21. Petitioner, entered the United States without inspection from Ecuador, on or about August 2021, after fleeing difficult conditions in Ecuador. Petitioner settled in New York, where he worked steadily in construction, and built a life rooted in hard work and responsibility. Unlike many adults adapting to life in a new country, who make mistakes, Petitioner has lived a quiet, law-abiding life in the United since his arrival.

22. On November 19, 2025, Petitioner was on his way to work via train, when he was approached by two individuals asking if he recognized the person in the picture they showed him. At the same moment, while they were speaking to him, **without warning or apparent justification,** he was detained by ICE agents, without "any" process at all.

23. Petitioner was taken into custody, on information and belief, unlawfully without a warrant and without being issued a NTA prior to his arrest.

24. Mr. Victor Hugo Pesantez Castro, fears that ICE intends to transfer him to a remote detention facility beyond the reach of his family, and attorneys, here in New York, **where he would not be able to participate in his Habeas hearing.** 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

25. 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.").

26. 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 Procedural Due Process

27. "[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)).

28. "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)).

29. 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).

30. 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.

31. 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. Victor Hugo Pesantez Castro's, interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004).

32. 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)). Moreover, his legal status has not changed from the time he entered the United States on or about August September 2021.

33. 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.

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

35. 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)

36. As in *Carlos Javier Lopez Benitez v. Francis,* **here too, upon information and belief, no individualized determination regarding the factors,** such as Petitioner's high flight risk or danger to society occurred contemporaneously or before ICE arrested Mr. Victor Hugo Pesantez Castro, on or about August 2021.

37. 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".

38. 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.

39. In our case, it is clear that Petitioner does not present a danger to the public, nor is there any risk of absconding during his removal proceedings, **as Petitioner is not in removal proceedings**.

40. Mr. Victor Hugo Pesantez Castro'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.

41. Furthermore, Mr. Victor Hugo Pesantez Castro's Procedural Due Process rights have been violated **since he was detained before he was actually subject to removal proceedings.** Under the plain text of 8 U.S.C. § 1226(a), ICE's authority to detain arises only 'pending a decision on whether the alien is to be removed'. No such proceedings existed here.

42. Moreover, the District Court's recent decision in *Gopie v. Lyons*, No. 25-cv-05229-SJB (E.D.N.Y. Nov. 13, 2025), confirmed that ICE lacks authority to detain a noncitizen when no Notice to Appear ("NTA") has been issued prior to arrest. The court held that 8 C.F.R. § 1236.1(b) requires the issuance of an NTA *before* the government may execute an arrest warrant, and that an arrest carried out in the absence of a prior NTA is unlawful and warrants immediate release.

43. 8 C.F.R. § states, "*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." (emphasis added). **The statute clearly requires the issuance of the NTA prior to an arrest.**

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. Victor Hugo Pesantez Castro's detention was therefore unlawful from its inception and cannot be justified by any post-hoc filing of a warrant.

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. Victor Hugo Pesantez Castro'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. The Court, in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), explained that the second factor in Mathew, that courts need to assess whether the challenged procedure **creates a risk of erroneous deprivation of individuals' private rights,** requires that "**before** the Government may exercise such discretion to detain a person, §1226(a) and its implementation regulations **require** actor 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.**

53. Moreover, the District Court in this district, recent decision in *Gopie v. Lyons*, No. 25-cv-05229-SJB (E.D.N.Y. Nov. 13, 2025), confirmed that ICE lacks authority to detain a noncitizen when no Notice to Appear ("NTA") has been issued prior to arrest.

54. "[T]he 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 *Choglo Chafla v. Scott*, No. 25 Civ. 438 (SDN), 2025 WL 2688541, at *11 (D. Me. Sep. 22, 2025)).

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

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

56. 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).

57. "[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 12, 2025
Queens, New York

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

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

I represent Petitioner, Mr. Victor Hugo Pesantez Castro, 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 12h day of December, 2025.

/s/ Avi Silberberg