UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NIDIA MARGARITA, PILCO-ACAN,

Petitioner,

v.

Judith ALMODOVAR, Acting Director of the New York City Field Office of Immigration and Customs Enforcement; Kristi Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General,

in their official capacities,

Respondents.

Case No. 1:25-cv-10538

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Agency No.: [redacted]

INTRODUCTION

1. Petitioner, Nidia Margarita, Pilco-Acan, is an asylum seeker from Ecuador.

2. On July 07, 2021, Petitioner entered the United States without inspection.

3. On October 28, 2021, the DHS issued Petitioner a Notice to Appear, under 212(a) (6) (A) (i).

4. Petitioner's asylum application, was denied on November 08, 2024. She was Ordered Removed, on that day of November 08, 2024.

5. She filed an appeal with BIA on December 12, 2024. Petitioner's BIA Appeal was denied on November 26, 2025. On December 4, 2025 Petitioner filed a Petition for Review with the 2nd circuit.

6. Petitioner was granted her U-Visa certification on December 16, 2025. Her U-Visa is pending, and yesterday, Petitioner sent her U-Visa application by overnight mail. In fact, Petitioner's son has an approved I-360, and his proceedings were dismissed on December 5, 2024.

7. On December 18, 2025, while Petitioner attended her Immigration and Customs Enforcement ("ICE") check-in with her Attorney, **without warning or apparent justification,** ICE apprehended her.

8. Upon information and belief, Petitioner remains detained at 26 Federal Plaza, New York, NY 10278, as of the time of the filing of this Habeas Petition.

9. Upon information and belief, ICE did not issue Petitioner a warrant prior to her arrest, and upon information and belief, Petitioner has no criminal record

10. Petitioner's detention was unlawful and unwarranted, since her legal status has not changed since July 07, 2021, when she entered the United States; the Immigration authorities failed to conduct *any* process, including a proper individual assessment of Ms. Nidia Margarita, Pilco-Acan, prior to her detention; and the immigration authorities failed to provide Petitioner any notice that she was to be detained.

11. Pursuant to 28 U.S.C. § 2243, Ms. Nidia Margarita, Pilco-Acan, 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" justifying its unexplained decision to detain Ms. Nidia Margarita, Pilco-Acan, in apparent excess of statutory authority.

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

JURISDICTION

13. This action arises under the Constitution of the United States and the Immigration

and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

14. 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).

15. 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

16. Venue is proper because—on information and belief—Petitioner is detained at 26 Federal Plaza, New York, NY 10278, which is within the jurisdiction of this Court.

PARTIES

17. Petitioner, Nidia Margarita, Pilco-Acan, is an Ecuadoran national who has lived in the United States since July 07, 2021. At the time of the unlawful and unexpected arrest by ICE, she was residing in [redacted], and employed as a professional manicurist.

18. Judith Almodovar is the Acting Director of ICE's New York Field Office. In her official capacity, she is charged with carrying out the functions of that office, including by making and overseeing decisions regarding immigration detention throughout the City of New York, including Bronx County. She therefore has custody over Petitioner, in that she can order his release from ICE custody.

19. Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"), which is ICE's parent agency. 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.

She therefore has constructive custody over Petitioner, in that she has the capacity to order DHS to release Petitioner from custody.

20. 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. She therefore has constructive custody of Petitioner, in that she has the capacity to order DHS to release Petitioner

STATEMENT OF FACTS

21. Petitioner, entered the United States without inspection from Ecuador, on July 7, 2001, after fleeing difficult conditions in Ecuador. Petitioner settled in New York, where she worked steadily as a professional manicurist, 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 her arrival.

22. Today, December 18, 2025, while Petitioner attended her ICE check-in with her Attorney, **without warning or apparent justification,** ICE apprehended her.

23. Ms. Nidia Margarita, Pilco-Acan, fears that ICE intends to transfer her to **Texas,** a remote detention facility beyond the reach of her family, and attorneys, here in New York, **where she would not be able to participate in her 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

24. 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.").

25. 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 Her Procedural Due Process

26. "[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)).

27. "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)).

28. 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).

29. 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.

30. 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 Ms. Nidia Margarita,Pilc-Acan's, interest in being free from physical detention is "the most elemental of liberty interests." *Hamdi v. Rumsfeld,* 542 U.S. 507, 529 (2004).

31. 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, Petitioner's legal status has not changed from the time she entered the United States on July 7, 2021.

32. **On the contrary since her arrival to the United States, on July 7, 2021, Petitioner has filed for a U-Visa, and on December 16, 2025, she has received a U-Visa Certification for her U-Visa application.**

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 Courts of this District,** in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), and *Nathaniel Romeo Rojas Acevedo v. Almodovar,* 25-cv-7189 (LJL), stated that for ICE to detain a non-citizen under *Mathews,* **ICE officials must make an individualized custody determination,** prior to its detention.

36. As in *Carlos Javier Lopez Benitez v. Francis,* and *Nathaniel Romeo Rojas Acevedo v. Almodovar,* 25-cv-7189 (LJL), **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 Petitioner, Nidia Margarita, Pilco-Acan, on July 7, 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 endanger the public, as she has no criminal record. Moreover, Petitioner, regularly appeared and is in full compliance with all ICE supervision, monthly appointments, and she appeared at all immigration hearings whenever he was scheduled. She is additionally, in full compliance of her probation check-ins.

40. Ms. Nidia Margarita, Pilco-Acan's detention was therefore unlawful from its inception, according to the three-part test set forth in *Mathews v. Eldridge*.

41. 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)).

42. "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).

43. Upon information and belief, ICE did not issue Petitioner a warrant prior to her arrest. Ms. Nidia Margarita, Pilco-Acan'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.

44. 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).

45. To meet the strictures of due process, Ms. Nidia Margarita, Pilco-Acan' 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).

46. 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

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

48. 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 her right to procedural due process, and she is therefore entitled to immediate release.

49. Moreover, **the Courts of this district,** in *Carlos Javier Lopez Benitez v. Francis,* 25 civ. 5937 (DEH), and *Nathaniel Romeo Rojas Acevedo v. Almodovar,* 25-cv-7189 (LJL), have

stated that for ICE to detain a non-citizen under *Mathews,* **ICE officials must make an individualized custody determination,** prior to its detention.

SECOND CLAIM FOR RELIEF
Violation of Fifth Amendment Right to 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 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).

52. "[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 (or in no event more than twenty 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 8 U.S.C. § 1231 as well as 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 18, 2025
Queens, New York

/s/ Reuben S. Kerben, Esq.
Reuben S. Kerben, Esquire

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

I represent Petitioner, Ms. Nidia Margarita, Pilco-Acan, and submit this verification on her 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 18th day of November, 2025.

/s/ Reuben S. Kerben