

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

HUELDER LUIZ DE MELO,

Petitioner,

v.

LUIS SOTO,

in his official capacity as Director/Warden of
Delaney Contract Detention Facility;

JOHN TSOUKARIS,

in his official capacity as Field Office Director,
New Jersey Field Office, U.S. Immigration &
Customs Enforcement;

PAMELA BONDI,

in her official capacity as Attorney General, U.S.
Department of Justice;

KRISTI NOEM,

in her official capacity as Acting Secretary, U.S.
Department of Homeland Security; and

TODD M. LYONS,

in his official capacity as Acting Director, U.S.
Immigration & Customs Enforcement;

Respondents.

Civil Action No.:

**MOTION FOR TEMPORARY
RESTRAINING ORDER/INJUNCTIVE
RELIEF**

&

**PETITION FOR WRIT OF
HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

MOTION FOR TEMPORARY RESTRAINING ORDER/INJUNCTIVE RELIEF

Petitioner, Huelder Luiz De Melo ("Mr. De Melo"), respectfully moves before this Honorable Court for a Temporary Restraining Order and Injunctive Relief, to enjoin the Respondents from continuing his unlawful prolonged detention during the pendency of his habeas corpus petition filed under 28 U.S.C. § 2241 and upon any grant in release, through the instant request for restraining order and/or habeas corpus petition, the issuance of an injunction to prevent further rearrest.

On May 5, 2025, Mr. De Melo was detained by U.S. Immigration and Customs

Enforcement (“ICE”). The corresponding habeas petition challenges his unlawful detention given his long-pending and meritorious BIA appeal, his extensive equities in the United States, and his role as the primary caregiver of four U.S. citizen children. The corresponding habeas petition challenges his detention as unconstitutional and disproportionate, particularly in light of the unresolved merits of his BIA appeal and the unjustified lack of any bond hearing to evaluate his eligibility for release.

To obtain a temporary restraining order and injunction, a movant must demonstrate that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). *Hope v. Warden York Cnty. Prison*, 972 F.3d 310, 320 (3d Cir. 2020).

First, Mr. De Melo is likely to succeed on the merits because he has raised substantial constitutional and statutory claims in his habeas petition demonstrating that his continued prolonged detention, while his BIA appeal has been pending since September 23, 2025, without any opportunity for a bond hearing, violates the Due Process Clause of the Fifth Amendment. His detention is particularly unlawful where ICE has actively obstructed his ability to pursue congressionally authorized relief, his then VAWA petition, by refusing to release him to complete required USCIS biometrics, thereby compounding the constitutional harm and rendering his continued confinement arbitrary and punitive.

Second, absent the preliminary relief requested, Mr. De Melo will suffer irreparable harm as a direct result of his unlawful confinement. This harm includes not only the severe deprivation of his liberty, but also the imminent and substantial harm to his **four U.S. citizen children, all of whom depend on him for daily emotional, parental, and financial support.** Mr. De Melo is a

present and active father whose detention has abruptly deprived his children of stability and care. Each day that Mr. De Melo remains unjustly confined, the suffering multiplies - threatening not only his own wellbeing, but the wellbeing and future of the family who need him simply to survive. An additional harm is the potential transfer to a detention facility located in a remote jurisdiction, thereby severely impairing his ability to communicate with and receive effective assistance from the undersigned counsel. Moreover, and it is of particular concern, that numerous undocumented individuals recently detained within the State of New Jersey have been promptly transferred to out-of-state facilities, often without prior notice to counsel or family members. Disturbingly, the ICE Online Detainee Locator System has frequently failed to update or accurately reflect such individuals' locations, effectively obscuring their whereabouts. This pattern of transfers, coupled with ICE's deficient notification practices, underscores the grave and imminent threat that Mr. De Melo's access to counsel and the Court will be unconstitutionally curtailed absent immediate judicial intervention.

Third, the harm endured by Mr. De Melo, and further by his four U.S. citizen children, overwhelmingly outweighs any purported burden on the government in continuing his unlawful detention; any asserted hardship to the government is minimal, speculative, and entirely self-inflicted. By improperly detaining Mr. De Melo despite his long-standing residence in the United States, his lack of any criminal history, and his pending BIA appeal, the government is imposing unnecessary fiscal and administrative costs upon itself and the judiciary. Continuing to detain Mr. De Melo serves no legitimate governmental interest and instead constitutes an inefficient and unjustifiable expenditure of public resources and judicial time.

Fourth, the public interest is served by ensuring compliance with the Constitution, preserving judicial review under 28 U.S.C. § 2241, and preventing further unlawful re-arrest.

For the foregoing reasons, Petitioner respectfully requests that this Court: 1. Issue a Temporary Restraining Order enjoining Respondents from continuing Petitioner's detention until resolution of the habeas petition; 2. Enter a preliminary and permanent injunction restraining Respondents from re-arresting Petitioner; and 3. Grant any further relief the Court deems just and proper.

**PETITION FOR WRIT OF HABEAS CORPUS PURSUANT
TO 28 U.S.C. § 2241**

Petitioner, Huelder Luiz De Melo, respectfully petitions this Honorable Court for a writ of habeas corpus to remedy his unlawful detention by Respondents, as follows:

INTRODUCTION

1. Petitioner Huelder Luiz De Melo ("Mr. De Melo") is a citizen of Brazil. He entered the United States on August 5, 2005, seeking a safer and more financially stable life.
2. Mr. De Melo is a devoted father of four U.S. citizen children, all of whom rely on him for daily emotional, parental, and financial support. He has lived and worked in the United States for many years, consistently providing for his family through honest and steady employment. Mr. De Melo is a hardworking and responsible individual who is well known within his community as a reliable worker and devoted parent, demonstrating strong family ties, a sustained work history, and continuous positive contributions to the community in which he has long resided.
3. On **May 5, 2025**, while driving, Mr. De Melo was stopped and taken into custody by U.S. Immigration and Customs Enforcement ("ICE"). He is currently detained at the Delaney Hall Detention Facility in New Jersey.
4. Presently, Mr. De Melo remains detained by U.S. Immigration and Customs Enforcement ("ICE") despite having a pending appeal before the Board of Immigration Appeals since September 23, 2025. *See Exhibit B: BIA Appeal ("Exhibit B").*

5. While detained, Mr. De Melo had a VAWA-based immigration petition pending, for which USCIS scheduled a required biometrics appointment. However, ICE refused to release Mr. De Melo to attend the appointment, rendering him physically unable to comply with USCIS requirements. As a direct result of ICE's actions, Mr. De Melo's VAWA petition was denied for abandonment, not due to any failure or neglect on his part, but solely because his detention made compliance impossible. *See Exhibit C: VAWA Receipt Notices.*
6. Because Mr. De Melo has a pending appeal before the Board of Immigration Appeals, and because his detention has directly resulted in the denial of his VAWA-based petition for abandonment solely due to ICE's refusal to allow him to attend his required biometrics appointment, there is a compelling likelihood that his claims will ultimately succeed on the merits. Notwithstanding any shifting statutory basis the government may assert for his continued detention, Respondents continue to detain Mr. De Melo without affording him any opportunity for a bond hearing. Even under a recharacterized detention framework, Respondents rely on the BIA's recent decision in *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), to justify mandatory detention without individualized review, a practice that raises serious constitutional concerns and further underscores the due process violations at issue in this case.
7. Mr. De Melo's pending form of relief is his appeal before the Board of Immigration Appeals, which remains unresolved while he continues to be detained by ICE without any opportunity for a bond hearing. Despite having lived in the United States for nearly two decades, working consistently, maintaining strong ties to his community, and serving as the devoted father of four U.S. citizen children, Mr. De Melo remains detained without individualized review of his custody. Meanwhile, his continued detention has caused severe hardship to his family, as his

U.S. citizen children have been abruptly deprived of their primary source of emotional, parental, and financial support. His ongoing confinement continues to destabilize his family and inflict harm that is immediate, substantial, and irreparable.

8. Mr. De Melo's detention is unlawful and being held without the opportunity to be heard violates the Due Process Clause of the Fifth Amendment.
9. Mr. De Melo's respectfully requests that this Court grant him immediate release from detention, or, in the alternative, the Court should order an immediate bond hearing to ensure Mr. De Melo's detention bears a reasonable relation to the government's interests.

PARTIES

10. Mr. De Melo has been detained by Respondents since May 5, 2025, at Delaney Hall Detention Facility ("Delaney").
11. Respondent Luis Soto is named in his official capacity as the Director/Warden of Delaney. Mr. Soto is responsible for the operation of Delaney, where Mr. De Melo is currently detained.
12. Respondent John Tsoukaris is named in his official capacity as the Director of the New Jersey Field Office for ICE. Mr. Tsoukaris is responsible for arrests, processing, detention, production, transfer, and release of individuals in removal proceedings. He is a legal custodian of Mr. De Melo.
13. Respondent Pamela Bondi is named in her official capacity as the U.S. Attorney General ("AG"). AG Bondi is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees the Executive Office for Immigration Review ("EOIR"). She is a legal custodian of Mr. De Melo.
14. Respondent Kristi Noem is named in her official capacity as the Acting Secretary of the U.S. Department of Homeland Security ("DHS"). Ms. Noem is responsible for the administration

of immigration laws under 8 U.S.C. § 1103(a) and oversees ICE. She is a legal custodian of Mr. De Melo.

15. Respondent Todd M. Lyons is named in his official capacity as the Acting Director of ICE. Mr. Lyons is responsible for the administration of federal immigration law and the execution of detention and removal determinations. He is a legal custodian of Mr. De Melo

JURISDICTION

16. This Court has jurisdiction over Mr. De Melo's Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 and 28 U.S.C. § 1331. The All Writs Act, 28 U.S.C. § 1651, grants this Court with remedial authority to issue this necessary writ. The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, allows this Court to grant injunctive and declaratory relief if it sees fit.

VENUE

17. Venue is proper in the District of New Jersey. Pursuant to 28 U.S.C. § 2241(d), a writ of habeas corpus may be filed in the district where the Petitioner is held in custody. Under 28 U.S.C. § 1391 (b) (2), a proper venue is where a substantial part of the events and omissions gave rise to the claim.
18. Mr. De Melo is currently in ICE custody at Delaney, where a substantial part of the events giving rise to his habeas claim occurred. Due to the custody location and occurrence in events, it is proper to file in the District of New Jersey.

EXHAUSTION

19. No statutory exhaustion requirements exist as to Mr. De Melo's unlawful detention claims. *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000).
20. Although exhaustion is not statutorily required when challenging detention under 28 U.S.C. §2241, many courts still require proof of exhaustion largely to the appropriate agency's benefit.

Id.

21. There are several exceptions that courts consider when evaluating exhaustion requirements.

An immigrant detainee advancing a due process claim is likely to be exempt because “the Board of Immigration Appeals (“BIA”) does not have jurisdiction to adjudicate constitutional issues.” *Khan v. United States AG*, 448 F.3d 226, 228 (3d Cir. 2006).

22. Mr. De Melo is not required to prove exhaustion because he is advancing due process claims in the instant habeas petition.

STATEMENT OF FACTS

23. Mr. Huelder Luiz De Melo was born on , in Brazil. On August 5, 2005, seeking safety and economic stability, he entered the United States. *See, Exhibit A: Declaration of Huelder Luiz De Melo in Support of his Habeas Petition*, ¶ 1, 4 (“*Exhibit A*”).

24. Since his entry in 2005, Mr. De Melo has made the United States his permanent home. He settled in New Jersey, where he has resided continuously for nearly two decades. Determined to build a stable life and support his family, Mr. De Melo began working shortly after his arrival and has since maintained steady and honest employment as a roofer for approximately eighteen years, establishing himself as a reliable and hardworking member of his community. *Id.* at ¶ 5.

25. Over the years, Mr. De Melo built his family and life in the United States. He is the devoted father of four U.S. citizen children, all of whom were born in the United States and reside together as a family unit. His children depend on him for daily parental care, emotional support, and financial stability. *Id.* at ¶ 7.

26. Mr. De Melo has always been a present and actively involved father, providing consistent guidance, care, and support to his children. He plays a central role in their upbringing and

well-being, ensuring their daily needs are met and that they grow up in a stable and supportive environment. *Id.*

27. Mr. De Melo's family relies heavily on his physical, emotional, and financial support. He is the primary provider for his household. His continued detention has abruptly deprived his U.S. citizen children of their father and sole source of stability, placing the family at significant risk of emotional and financial hardship. *Id.*

28. For nearly twenty years, Mr. De Melo has lived in the United States without any criminal convictions. Any prior criminal matters were fully dismissed. During this time, he has remained a law-abiding resident, a dedicated father, a steady provider, and a well-known member of his community. Mr. De Melo is actively involved in his local church, which he attends regularly, and is regarded as a hardworking and dependable individual. *Id.* ¶ 8.

Mr. De Melo's Proceedings

29. Mr. De Melo is currently subject to a final order of removal issued on September 11, 2025. He timely filed an appeal with the Board of Immigration Appeals, which was received on September 23, 2025, and remains pending. *See Exhibit B.*

30. In addition to his pending BIA appeal, Mr. De Melo previously filed a VAWA-based immigration petition. USCIS scheduled Mr. De Melo for a required biometrics appointment; however, at the time of the appointment, Mr. De Melo was already detained by ICE and was not released to attend, rendering him physically unable to comply with USCIS requirements.

31. As a direct result of ICE's refusal to allow Mr. De Melo to attend his biometrics appointment, his VAWA petition was denied for abandonment, despite no fault or neglect on his part. Mr. De Melo's detention thus directly interfered with and obstructed his ability to pursue congressionally authorized humanitarian relief. *Exhibit A.*

32. On May 5, 2025, while driving, Mr. De Melo was stopped and taken into custody by U.S. Immigration and Customs Enforcement (“ICE”). He is currently detained at the Delaney Hall Detention Facility in New Jersey, where he remains confined while his BIA appeal is pending, without having been afforded any bond hearing. *Exhibit A*, ¶ 2.

LEGAL FRAMEWORK

I. MR. DE MELO IS LIKELY TO SUCCEED ON THE MERITS OF HIS CLAIMS THAT HIS PROLONGED DETENTION IS UNLAWFUL & VIOLATES HIS DUE PROCESS RIGHTS.

33. The Due Process Clause of the Fifth Amendment is applicable to all individuals in the United States; moreover, every immigrant, regardless of status or lack thereof, is entitled to due process protections. *Zadvydas v. Davis*, 533 US 678, 682 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003); *Reno v. Flores*, 507 U.S. 292, 3061 (1993); *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). Even further, individuals navigating our immigration system in pursuit of lawful status have a right to be noticed, meaningfully heard and protected from governmental constraints, which deprive them of any liberty or property interests. *Landon v. Plasencia*, 459 US 21, 34 (1982). Specifically concerning detainment, the Supreme Court has held that civil detention “for any purpose constitutes a significant deprivation of liberty that requires due process protection.” *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992).

A. Mr. De Melo’s Prolonged Detention Without a Bond Hearing is Unconstitutional.

34. Significant constitutional issues arise where physical confinement becomes unreasonably prolonged. *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

35. As the Third Circuit Court of Appeals has affirmed, when civil detention exceeds a reasonable period, due process requires a bond hearing where the Government bears the burden of proving, by clear and convincing evidence, that continued detention is warranted to prevent

flight or a danger to the community. *German Santos v. Warden Pike Cty. Corr. Fac.*, 965 F.3d 203, 208 (3d Cir. 2020); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 232-33 (3d Cir. 2011); *Chavez-Alvarez v. Warden York County Prison*, 783 F.3d 469, 478 (3d Cir. 2015). In *Santos*, the court evaluated the two-and-a-half-year mandatory detention of an LPR. Ultimately, the court held “[w]hen detention becomes unreasonable, the Due Process Clause demands a hearing” and that Mr. Santos was entitled to a bond hearing where the Government would bear the burden of proof of justifying continued detention. *Id.* at 206. Importantly, the court provided a four-factor test for evaluating prolonged detention, including duration of detention, “whether the detention is likely to continue,” “reasons for the delay,” and whether the non-citizen’s “conditions of confinement are ‘meaningfully different’ from criminal punishment.” *Id.* Under the factors articulated in *Santos*, Mr. De Melo’s detention has become unreasonably prolonged.

36. First, Mr. De Melo was detained by ICE since May 5, 2025. This amounts to over seven months of civil confinement, specifically 235 days at the filing of this petition. The length of his confinement falls squarely in the six months to one-year reasonable timeframe set forth in *Zadvydas* and *Chavez-Alvarez*.

37. Second, Mr. De Melo’s detention will inevitably continue due to his pending appeal. On September 23, 2025, Mr. De Melo filed a Notice of Appeal with the BIA. *Exhibit B*. Although the BIA strives to complete its appellate review within 180 days, it is very likely the appeal process will take significantly longer. *AAO Processing Times*, USCIS (Dec. 23, 2025) <https://www.uscis.gov/administrative-appeals/ao-processing-times>.

38. Third, Mr. De Melo did not cause any delay in his proceedings that would justify his prolonged detention. As indicated in *Santos*, an immigrant detainee’s “good-faith challenge

to his removal” must not be held against him “even if his appeals or applications for relief have drawn out the proceedings.” *Santos*, 965 F.3d at 211. The court reasoned that if filing appeals was held against a detainee it would “effectively punish [him or her] for pursuing applicable legal remedies.” *Id. Exhibit B*.

39. Fourth, the conditions of Mr. De Melo’s confinement mirror, and arguably worse, than of criminal punishment. The egregious confinement conditions at Delaney are not only well-known to the detainees trapped behind its walls, but to the public at large including the Department of Homeland Security. As per a prior inspection report, DHS found a host of food safety and living conditions violations endured by detainees. Concerning the food served to inmates, DHS found: widespread mishandling of food ranging from service of moldy bread, “slimy, foul-smelling lunch meat,” “raw chicken leaking blood all over refrigeration units,” and service of meat “that smelt like fecal matter.” *Exhibit D: DHS 2019 Office of Inspector General Report (“Exhibit D”)*. Concerning environmental conditions, DHS found: leaking ceilings dripping directly onto detainee beds, showers laced with mold and peeling paint, dilapidated beds requiring detainees to utilize bedsheets to tie the seams of the mattress together, and lack in access to recreation space outside of their living area. *Id.*
40. As of June 2025, seemingly the disastrous infrastructure of Delaney has not improved, which is evidenced by the “escape” of four immigrant detainees. As a result of the conditions they endured, ranging from sleeping on the floor, limited to drinking foul-tasting water for hydration, and going hours on end without food just to be served slices of bread as a meal, four detainees were able to “escape” the facility by punching through the exterior wall of the jail. *Exhibit E: Inside the Tumult That Led 4 Men to Escape From a Migrant Facility, NYTimes Article (June 2025) (“Exhibit E”)*.

41. Being civilly detained for over seven months without an opportunity to be heard violates the Due Process Clause.

B. Mr. De Melo's pending BIA Appeal is Meritorious and therefore, he should not be categorized under 8 U.S.C. § 1231(a)(1) for purposes of detention.

42. Mr. De Melo is currently subject to a final order of removal; however, that order is not administratively final for purposes of detention, as he has a timely filed appeal pending before the Board of Immigration Appeals ("BIA"), which was received on September 23, 2025, and remains unresolved. *Exhibit B*.

43. Where a noncitizen has a pending appeal before the BIA, removal is not imminent, and the government's detention authority under 8 U.S.C. § 1231(a) has not yet been triggered. Instead, detention during the pendency of administrative review must be evaluated under pre-removal detention standards and remains subject to constitutional limitations, including the right to due process and individualized custody determinations.

44. Despite the pendency of Mr. De Melo's BIA appeal, Respondents have continued to detain him without affording any opportunity for a bond hearing or individualized custody review. Such detention is improper where administrative proceedings remain ongoing and the government cannot demonstrate that removal is reasonably foreseeable.

45. In addition to his pending BIA appeal, Mr. De Melo pursued VAWA-based immigration relief, a form of congressionally authorized humanitarian protection. While his VAWA petition was pending, USCIS scheduled Mr. De Melo for required biometrics; however, ICE refused to release him from detention to attend, rendering compliance impossible. As a direct result of ICE's actions, his VAWA petition was denied for abandonment, despite no fault or neglect on his part. *Exhibit C*.

46. Where the government itself creates the circumstances that prevent a noncitizen from pursuing

available relief, continued detention becomes arbitrary and punitive. Mr. De Melo's detention has thus not only persisted during the pendency of his BIA appeal, but has also affirmatively interfered with his access to statutory relief, further undermining any claim that detention under 8 U.S.C. § 1231(a)(1) is appropriate.

47. Moreover, Mr. De Melo has no criminal convictions, as any prior criminal matters were fully dismissed, and he poses neither a danger to the community nor a flight risk. He has resided in the United States for nearly twenty years, is the father of four U.S. citizen children, maintains steady employment, and has deep ties to his community in New Jersey.

48. Given the pendency of Mr. De Melo's BIA appeal, the absence of any criminal convictions, and the government's direct interference with his pursuit of humanitarian relief, Respondents cannot lawfully justify his continued detention under 8 U.S.C. § 1231(a)(1)(2). Any attempt to recharacterize his detention under alternative statutory provisions, without providing a bond hearing, raises serious constitutional concerns and further demonstrates that Mr. De Melo's continued detention violates the Due Process Clause of the Fifth Amendment.

C. Respondents' Reliance on INA § 1225(b)(2) Is Unlawful Following the Final Judgment in Bautista.

49. Recent developments in federal court further confirm that Respondents lack lawful authority to detain Mr. De Melo without an individualized bond hearing. On December 18, 2025, the United States District Court for the Central District of California entered Final Judgment in the nationwide class action *Maldonado Bautista v. Santacruz*, declaring the government's policy of detaining noncitizens who entered without inspection ("EWIs") under INA § 1225(b)(2) to be unlawful.

50. Mr. De Melo squarely falls within the certified class in *Bautista*. He entered the United States without inspection, was apprehended during an interior enforcement action, is not subject to

mandatory detention under INA § 1226(c), and is being detained without any opportunity for a bond hearing. As a class member, Mr. De Melo is entitled to the protections established by the Final Judgment, and Respondents are precluded from continuing to detain him under a statutory framework that has been declared unlawful on the merits.

51. Moreover, the Bautista court expressly rejected the government's reliance on *Matter of Yajure-Hurtado*, holding that its core legal conclusion "can no longer be squared" with the governing statutory scheme and constitutional requirements. Accordingly, Respondents' continued reliance on *Yajure-Hurtado* to justify Mr. De Melo's mandatory detention without bond is no longer tenable and violates the Due Process Clause of the Fifth Amendment.

D. The BIA's Interpretation of INA 235 (b) (2), in the *Matter of Yajure-Hurtado*, Violates Mr. De Melo's 5th Amendment Due Process Rights.

52. On September 5, 2025, the BIA made the disturbingly, unconstitutional decision in the *Matter of Yajure-Hurtado*, 29 I&N Dec. 216 (BIA 2025), which ignored decades of legal precedent, the Constitution, and stripped away the well-established due process rights for a plethora of non-citizens. Moreover, the *Matter of Yajure-Hurtado* established the dangerous sweeping rule that any non-citizen present in the United States without having been inspected and admitted who is arrested with or without a warrant is subject to mandatory detention under INA § 235(b)(2), rather than the typical discretionary detention under INA § 236 (a), this is without regard of where the non-citizen was apprehended or how long the non-citizen has resided in the United States. *Id.*
53. Again, the BIA's decision directly conflicts with significant U.S. Supreme Court decisions including but not limited to *Zadvydas v. Davis*, 533 U.S. 678 (2001), *Demore v. Kim*, 538 U.S. 510 (2003), *Boumediene v. Bush*, 553 U.S. 723 (2008), *Mathews v. Eldridge*, 424 U.S. 319 (1976), and *United States v. Salerno*, 481 U.S. 739 (1987).

54. The BIA's ruling of restrictions on the Due Process Clause and mandated, unchecked detentions under INA § 235(b)(2), instead of INA § 236(a), has already been refuted by a myriad of Federal District Courts across the nation, including the New Jersey Federal District Court, through the re-enforcement of INA § 236(a), not INA § 235(b)(2), and further, many grants in habeas petition reliefs based on the resounding due process violations set forth by the *Matter of Yajure-Hurtado*. *De Fatima Lomeu v. Soto, et al.*, No. 2:25-cv-16589 (D.N.J. Oct. 23, 2025); *Zumba v Bondi*, 2025 US Dist LEXIS 167666 [DNJ Aug. 28, 2025, No. 25-cv-14626 (KSH)]; *Benitez v. Francis*, 2025 US Dist LEXIS 153952 [SDNY Aug. 8, 2025]; *Samb v. Joyce*, 2025 US Dist LEXIS 161109 [SDNY Aug. 19, 2025]; *Sampiao v. Hyde*, 2025 US Dist LEXIS 175513 [D Mass Sep. 9, 2025, No. 1:25-cv-11981-JEK]; *Leal-Hernandez v. Noem*, 2025 US Dist LEXIS 165015 [D Md Aug. 24, 2025, No. 1:25-cv-02428]; *Kostak v. Trump*, 2025 US Dist LEXIS 167280 [WD La Aug. 27, 2025, No. 3:25-1093]; *Zaragoza Mosqueda v. Noem*, 2025 US Dist LEXIS 174828 [CD Cal Sep. 8, 2025, No. 5:25-cv-02304]).
55. Regardless of the pendency of Mr. De Melo's appeal before the Board of Immigration Appeals, Respondents continue to subject him to unconstitutional mandatory detention under INA § 235(b)(2) without any opportunity to be heard, relying on the BIA's decision in *Matter of Yajure-Hurtado*. The absence of a bond hearing constitutes a blatant infringement of Mr. De Melo's due process rights as established by a long line of United States Supreme Court precedent and the Fifth Amendment to the Constitution. For nearly twenty years, Mr. De Melo has lived in the United States as a law-abiding, hardworking individual, serving as the primary provider and caregiver for his four U.S. citizen children and contributing meaningfully to his community. *See* Exhibit A. Pursuant to controlling Supreme Court precedent and fundamental principles of due process, Mr. De Melo respectfully requests that this Court find his detention

to be discretionary under INA § 236(a) and order that he be afforded an opportunity to be heard, as numerous federal district courts, including courts within the District of New Jersey, have done for similarly situated individuals. Mr. De Melo's family's stability and well-being depend on his presence and support.

E. Mr. De Melo's unlawful detention, without a bond hearing while his Meritorious BIA Appeal Remains Pending, violates the Fifth Amendment.

56. Upon an individual evidencing a liberty or property interest, a Court must determine whether constitutionally sufficient procedures were provided by balancing: First, the private interest that will be affected by the official action; Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural requirement would entail; and Finally, 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.

57. Immigrants facing deportation and removal proceedings have a deep-rooted liberty interest – **“the right to stay and live and work in this land of freedom.”** *Bridges v. Wixon*, 326 U.S. 135, 154 (1945).

58. Mr. De Melo is entitled to the protections of the 5th Amendment Due Process Clause. First, Mr. De Melo has a substantial liberty interest in remaining in the United States, where his entire life is firmly rooted. He is the devoted father of four U.S. citizen children, all of whom depend on him for daily care, emotional support, and financial stability. Mr. De Melo has lived in the United States for nearly two decades, has maintained steady employment as a hardworking laborer, and has established deep family and community ties in New Jersey. The government has failed to identify any legitimate basis for his continued confinement. Mr. De

Melo is not a flight risk, he has no criminal convictions, and he poses no danger to the community.

59. Second, in light of the Constitution, the INA and its applicable regulations, Respondents have procedurally deprived and continue to risk deprivation of Mr. De Melo's due process rights. When evaluating the second *Mathews* prong "the only interest to be considered . . . is that of the detained individuals—not the government." *Black v Director Thomas Decker*, 103 F.4th 133, 152 (2d Cir. 2024). Without any regards, Respondents have violated Mr. De Melo's due process rights tenfold: ICE's efforts to prematurely deport and confine Mr. De Melo while his meritorious BIA appeal remains pending and prior to an Immigration Judge adjudicating his meritorious appeal, constitutes a deprivation in his liberty interest to stay in the United States with his loved one and Mr. De Melo was thrown in a detention center without the opportunity to be heard for bond upon a bond hearing, Mr. De Melo would demonstrate he is neither a flight risk nor a danger to community. Due to Respondent's unjustified arrest of Mr. De Melo, an astonishing snowball effect of due process violations has occurred and will continue to occur so long as Mr. De Melo is detained.
60. Third, the government's immigration policies can, and still will be, upheld through release and/or providing a bond hearing to Mr. De Melo. Even further, any additional or substitute procedural requirement would not burden the government whatsoever - if anything, the government is burdening itself by fiscally detaining Mr. De Melo and wasting judicial resources. ICE, easily, could have continued its enforcement measures through less restrictive and more financially sound means.

61. All three factors, weigh heavily in Mr. De Melo's favor. Moreover, Mr. De Melo has established that Respondents violated his due process rights, which warrants his immediate release from ICE custody or, in the alternative, an immediate bond hearing.

F. Mr. De Melo's detention violates his right to substantive due process because he is neither a flight risk nor a danger to the community.

62. Immigration detention is civil and must "bear a reasonable relation to the purpose for which the individual [is] [detained]" so that it remains "nonpunitive in purpose and effect." *Id.* at 690. Further, and to comport with due process, there are only two legitimate regulatory purposes for immigration detention to ensure the appearance of noncitizens at future hearings and to prevent danger to the community pending the completion of removal. *Zadvydas*, 533 U.S. at 690-691; *Diop v. ICE*, 656 F.3d 221, 233-234 (3d Cir. 2011).

63. Mr. De Melo is far from a flight risk and will appear at all future immigration proceedings. His four U.S. citizen children, his long-standing residence in the United States, his steady employment, and everything he has built are here. Most importantly, his family depends on him for daily stability and survival. Mr. De Melo is the primary financial provider and active caregiver for his household, and his continued detention has already caused significant emotional and financial hardship to his U.S. citizen children. Without Mr. De Melo, his children face serious and ongoing hardship that cannot be remedied by continued detention. See, *Exhibit A*.

64. Mr. De Melo is not a danger to the community. He has no criminal convictions, as any prior criminal matters were fully dismissed. To the contrary, Mr. De Melo is a hardworking and reliable individual who has lived in the United States for nearly two decades, consistently contributing to his community through steady employment, family responsibility, and active participation in his local church.

65. No legitimate interests exist as to Mr. De Melo's detention, rather the government is detaining Mr. De Melo along with countless others swept up in its courthouse arrests, ICE check-ins, and USCIS arrests, for the understandable but illegitimate reason that he was easy to locate. Due to pure accessibility, Mr. De Melo was detained without any opportunity to heard.
66. Because Mr. De Melo's detention has been unaccompanied by the procedural protections that such a significant deprivation of liberty requires under the Due Process Clause of the Fifth Amendment to the U.S. Constitution, his continued detention without a bond hearing is unlawful and therefore, he should be released.
67. In the alternative, the Court should order an immediate bond hearing to ensure Mr. De Melo's detention bears a reasonable relation to the government's interests.

CLAIMS FOR RELIEF

COUNT ONE

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (SUBSTANTIVE DUE PROCESS)

1. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
2. Mr. De Melo is not a flight risk nor is he a danger to the community. Respondents' detention of Mr. De Melo is therefore unjustified and unlawful. Accordingly, Mr. De Melo is being detained in violation of his Constitutional right to Due Process under the Fifth Amendment.

COUNT TWO

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION (PROCEDURAL DUE PROCESS)

3. Petitioner re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.
4. The Due Process Clause of the Fifth Amendment protects all “person[s]” from deprivation of liberty “without due process of law.”
5. Mr. De Melo is entitled to the protections of the 5th Amendment Due Process Clause. First, Mr. De Melo has a significant liberty interest in remaining the United States. Second, in light of the Constitution, the INA and its applicable regulations, Respondents have procedurally deprived and continue to risk deprivation of Mr. De Melo’s due process rights.
6. Third, any additional or substitute procedural requirement would not burden the government whatsoever - if anything, the government is burdening itself by fiscally detaining Mr. De Melo and wasting judicial resources.
7. Accordingly, Mr. De Melo is being detained without sufficient process in violation of his Constitutional right to Due Process under the Fifth Amendment.

PRAYER FOR RELIEF

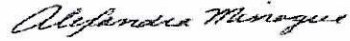
WHEREFORE, Petitioner respectfully requests that this Court:

1. Assume jurisdiction over the instant matter;
2. Issue a Writ of Habeas Corpus ordering the immediate release of Petitioner from Respondents custody;
3. In the alternative, grant a Writ of Habeas Corpus ordering an immediate bond hearing to ensure Petitioner’s detention bears a reasonable relation to the government’s interests; and
4. Enter a preliminary and permanent injunction restraining Respondents from re-arresting Petitioner;

5. Order any such other relief as this Court deems just and proper.

Dated: December 26, 2025

Respectfully Submitted,



Alexandra Minogue, Esq.
NJ Bar ID: 479582024
Nova Law Group
21 Fulton Street
Newark, NJ 07102
E: aminogue@nova.law
P: 844-844-6682
Counsel for Petitioner

CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Motion for Temporary Restraining Order and Injunctive Relief and Petition for Writ of Habeas Corpus with all attachments using the PACER system.

Dated: December 26, 2025

Respectfully Submitted,



Alexandra Minogue, Esq.
NJ Bar ID: 479582024
Nova Law Group
21 Fulton Street
Newark, NJ 07102
E: aminogue@nova.law
P: 844-844-6682
Counsel for Petitioner

EXHIBIT A

DECLARATION OF HUELDER LUIZ DE MELO IN SUPPORT OF HIS HABEAS

PETITION

1. My name is Huelder Luiz De Melo, and I was born on [REDACTED] in Brazil. I have lived in the United States since August 5, 2005. For nearly twenty years, I have worked hard, raised my children, and become part of my community in New Jersey. I have never been convicted of any crime, and any past criminal matters were fully dismissed.
2. My immigration detention began on May 5, 2025, when I was stopped while driving and taken into custody by U.S. Immigration and Customs Enforcement (“ICE”). I am currently detained at the Delaney Hall Detention Facility. Being separated from my children, my partner, and everything I have built in this country has caused hardship that is very difficult to put into words.
3. In the United States, I have built a family and a home, respected the laws, worked honestly for many years, and contributed to my community. This country is where my children were born and where my entire life is rooted. Despite this, I am being treated as a prisoner simply for wanting to remain with my family and continue the life I have built here.

LIFE PRIOR TO MY IMMIGRATION DETENTION

4. I came to the United States in 2005 seeking safety, stability, and the opportunity to work and build a better life. From the moment I arrived, I worked hard and stayed focused on providing for myself and, later, for my family. New Jersey has been my home for almost two decades.
5. For approximately eighteen years, I have worked as a roofer, performing physically demanding and honest labor. Through my work, I have consistently supported my household, paid my bills, and maintained a stable residence. I have always taken pride in

being reliable, responsible, and committed to providing for my family through my own effort.

6. Over the years, I built a family and a home in the United States. I am the father of four U.S. citizen children, all of whom depend on me for daily care, emotional support, and financial stability. Being a father is the most important role in my life. I am actively involved in my children's upbringing and have always been present to guide them, protect them, and provide for their needs.
7. In addition to my children's dependence on me, my current partner suffered a serious accident and is now fully dependent on me for financial support, daily assistance, and stability. Before my detention, I was the person responsible for ensuring that she and my children were cared for and safe. Since my detention, my family has struggled greatly without my presence and support.
8. I have always maintained a stable residence and strong ties to my community. I regularly attend church, where I have built meaningful relationships and receive emotional and spiritual support. My faith and my community have been a constant source of strength and guidance in my life. I am known as a hardworking, respectful, and dependable person by those who know me.
9. Prior to my detention, I was pursuing immigration relief and attempting to resolve my immigration status through lawful means. I filed a VAWA-based petition, and USCIS scheduled me for a required biometrics appointment. However, after I was detained by ICE, I was not allowed to attend my biometrics appointment, despite my willingness to comply. As a result, my VAWA petition was denied for abandonment, not because of anything I failed to do, but because my detention made it impossible for me to appear.