UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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DANIEL TZAY-TZAY,
A[redacted],

Petitioner,

-against- Civil Action No. _____

ROBERT BROWN, Warden,
Metropolitan Detention Center Brooklyn,

ANTOINE FRAZIER
Acting Warden of the Metropolitan Detention Center

WARDEN
Metropolitan Detention Center (Brooklyn)

TODD BLANCHE
Attorney General Of The United States

MARKWAYNE MULLIN
Secretary U. S. Department of Homeland Security

TODD M. LYONS,
Acting Director, U.S. Immigration and Customs Enforcement,

KENNETH GENALO, New York Field Office Director,
U.S. Immigration and Customs Enforcement,
FIELD OFFICE DIRECTOR, ICE
Enforcement and Removal Operations, New York City Field Office

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW,

Respondents.

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PETITION FOR WRIT OF HABEAS CORPUS

PURSUANT TO 28 U.S.C. § 2241

Petitioner, Daniel Tzay-Tzay, by and through undersigned counsel, respectfully petitions this Court for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 and alleges as follows:

INTRODUCTION

1. Petitioner is currently detained by Immigration and Customs Enforcement ("ICE") at the Metropolitan Detention Center ("MDC") in Brooklyn, New York.

2. The Petitioner is a native and citizen of Guatemala. He is employed in construction and the father of two (2) United States citizen children.

3. Due to a lack of substantive access, the Undersigned does not have access to his client and is relying upon family members to fill in the blanks.

4. Unfortunately, due to DHS-ICE blatant forum shopping with detainees, the instant writ is being filed faster than the Undersigned would prefer.

5. Petitioner last entered the United States without inspection ("EWI") sometime in May of 2013.

6. Upon information and belief, the Respondent entered without being caught or detained by Customs and Border Protection.

7. At approximately six (6) A.M. on May 16, 2026, the Respondent was detained by DHS-ICE senselessly. He was briefly detained in Delany Hall before being transferred to MDC on the 21st of May, where he remains.

8. Upon information and belief, the Petitioner has no criminal contacts. DHS-ICE has no legitimate reason to detain him.

9. Respondents continue to detain Petitioner without providing a constitutionally adequate bond hearing or meaningful opportunity to seek release.

10. Petitioner has also experienced restricted and inadequate communication with family members and counsel while detained, impairing Petitioner's ability to prepare and pursue legal relief.

11. Petitioner is neither a danger to the community nor a flight risk.

12. Continued detention has caused severe hardship to Petitioner and Petitioner's family.

13. Respondents have failed to provide Petitioner with adequate due process protections regarding continued detention.

14. Petitioner's continued detention violates the Constitution and laws of the United States.

15. Counsel further has a reasonable and well-founded concern that Respondents may attempt to transfer Petitioner outside the Eastern District of New York during the pendency of these proceedings in an effort to defeat or frustrate this Court's jurisdiction over the instant habeas petition.

16. Federal courts have recognized that transfers of immigration detainees during pending habeas proceedings may improperly interfere with access to counsel, impair the ability to litigate claims, and undermine judicial review.

17. Petitioner's transfer to another detention facility outside this District would substantially prejudice Petitioner's ability to communicate with counsel, maintain family contact, and pursue relief before this Court.

18. Petitioner seeks immediate release from custody or, alternatively, an individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a).

PARTIES

19. Petitioner DANIEL TZAY-TZAY is a native and citizen of Guatemala and is currently detained by U.S. Immigration and Customs Enforcement ("ICE") at the Metropolitan Detention Center ("MDC") in Brooklyn, located within the Eastern District of New York.

20. Petitioner is detained under color of federal immigration authority and is in the physical custody of Respondents.

21. Respondent ROBERT BROWN is the Warden of Metropolitan Detention Center in Brooklyn is the immediate custodian of Petitioner. ANTOINE FRAZIER, upon information and belief, may be the acting warden of MDC. WARDEN is an individual serving as Warden at MDC.

22. Respondent TODD BLANCHE is the Attorney General of the United States and is responsible for the supervision and administration of the Executive Office for Immigration Review ("EOIR"), including immigration court proceedings affecting Petitioner.

23. Respondent MARKWAYNE MULLIN is named in his official capacity as Secretary of the U.S. Department of Homeland Security ("DHS") and is responsible for the administration and enforcement of federal immigration laws.

24. Respondent TODD M. LYONS is the Acting Director of U.S. Immigration and Customs Enforcement and is responsible for ICE detention policies, practices, and enforcement actions affecting Petitioner.

25. Respondent KENNETH GENALO is the New York Field Office Director for U.S. Immigration and Customs Enforcement and oversees Petitioner's immigration detention and custody determinations within the New York Area of Responsibility. Field Office Director is any individual serving as the role of Field Office Director of DHS-ICE.

26. Respondent EXECUTIVE OFFICE FOR IMMIGRATION REVIEW ("EOIR") It is the federal agency responsible for the administration of immigration court proceedings and custody redetermination hearings involving the Petitioner.

27. At all relevant times, Respondents acted under color of federal law.

CLAIMS FOR RELIEF

COUNT I

Violation of Due Process Rights

28. The Second Circuit has recognized that noncitizens detained under 8 U.S.C. § 1226(a), including individuals who entered without inspection ("EWI"), are entitled to due process protections in immigration detention proceedings.

29. In *Velasco Lopez v. Decker*, 978 F.3d 842 (2d Cir. 2020), the Second Circuit held that prolonged immigration detention without the Government bearing the burden of proving dangerousness or flight risk violates due process. The Court affirmed habeas relief and required a constitutionally adequate bond hearing at which the Government must justify continued detention by clear and convincing evidence.

30. More recently, in *Barbosa da Cunha v. Freden*, No. 25-3141-pr (2d Cir. Apr. 28, 2026), the Second Circuit held that noncitizens who entered the United States without inspection ("EWI") and were later arrested in the interior are detained under 8 U.S.C. § 1226(a), rather than the mandatory detention provisions of 8 U.S.C. § 1225(b)(2)(A).

31. The Second Circuit expressly rejected the Government's position that individuals present in the interior after EWI are categorically subject to mandatory no-bond detention and confirmed that such individuals remain eligible for individualized bond hearings before an Immigration Judge pursuant to § 1226(a).

32. Accordingly, Petitioner's continued detention without a meaningful opportunity to seek release on bond violates the Due Process Clause of the Fifth Amendment and the statutory detention framework recognized in *Velasco Lopez v. Decker* and *Barbosa da Cunha v. Freden*.

33. Petitioner respectfully requests immediate release or, alternatively, a constitutionally adequate individualized bond hearing at which the Government bears the burden of proving by clear and convincing evidence that continued detention is necessary.

COUNT II

Unlawful and Excessive Detention

34. Petitioner repeats and realleges the foregoing allegations.

35. Immigration detention is civil in nature and may not become punitive.

36. Respondents have continued to detain Petitioner without an individualized determination demonstrating that detention remains necessary.

37. Petitioner's prolonged detention without adequate procedural safeguards violates the Due Process Clause of the Fifth Amendment.

38. Petitioner is entitled to habeas relief under 28 U.S.C. § 2241.

ANCILLARY ISSUES I

Need to Preserve Jurisdiction of the Court

39. Petitioner respectfully submits that this Court should retain jurisdiction over this matter and prohibit transfer of Petitioner outside this District during the pendency of these proceedings, absent prior notice to counsel and leave of Court.

40. There exists a substantial risk that Respondents may seek to transfer Petitioner for the purpose or effect of frustrating judicial review and impairing Petitioner's access to counsel.

41. Such a transfer would substantially prejudice Petitioner and interfere with the fair adjudication of this habeas action.

ANCILLARY ISSUES II

Absence of the Presumption of Regularity

42. Petitioner further submits that Respondents are not entitled to an unquestioned presumption of good faith or regularity where DHS and ICE have adopted detention practices repeatedly rejected by federal courts as contrary to governing statutes and constitutional due process requirements.

43. In Barbosa da Cunha v. Freden, No. 25-3141-pr (2d Cir. Apr. 28, 2026), the Second Circuit rejected the Respondents' interpretation of the detention statutes and confirmed that noncitizens arrested in the interior after EWI remain eligible for individualized bond hearings under § 1226(a).

44. Yet, respondents are known for zipping non-citizens to more accommodating jurisdictions, thus necessitating a quick habeas filing prior to a bond hearing being set and a bond case being heard.

45. Respondents' continued efforts to deny bond eligibility despite controlling judicial authority, together with the risk of transfer during the pendency of this habeas proceeding, undermines any claimed presumption that Respondents are acting with regularity sufficient to protect Petitioner's constitutional rights absent judicial oversight.

46. Immediate judicial intervention is necessary to preserve this Court's jurisdiction, protect Petitioner's due process rights, and prevent unlawful continued detention.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

i. Assume jurisdiction over this matter;

ii. Issue a Writ of Habeas Corpus directing Respondents to immediately release Petitioner from custody; or

iii. In the alternative, order Respondents to provide Petitioner with a prompt constitutionally adequate individualized bond hearing before an Immigration Judge pursuant to 8 U.S.C. § 1226(a);

iv. Order that at any bond hearing the Government bear the burden of proving by clear and convincing evidence that continued detention is justified;

v. Enjoin Respondents from transferring Petitioner outside the jurisdiction of this Court during the pendency of this proceeding absent prior authorization from the Court;

vi. Award reasonable attorneys' fees and costs where authorized by law; and

vii. Grant such other and further relief as the Court deems just and proper.

Dated: New York, New York

May 27, 2026Respectfully submitted,

/s/ Patrick Caston Crowley

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