

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

GUADALUPE LUCERO COHETERO

Petitioner-Plaintiff

v.

WARDEN as Warden of Delaney Hall  
Detention Facility in his official capacity;

JOHN TSOURKARIS, in his official capacity  
as Field Office Director of the Immigration and  
Customs Enforcement Newark Field Office;

TODD M. LYONS, in his official capacity as  
Acting Director of Immigration and Customs  
Enforcement

Respondent-Defendants.

Civil Action No. 25-14364

**PETITION FOR WRIT  
OF HABEAS CORPUS  
AND COMPLAINT  
FOR DECLARATORY  
AND INJUNCTIVE  
RELIEF**

**INTRODUCTION**

1. For more than two decades, Petitioner-Plaintiff Guadalupe Lucero Cohetero has worked tirelessly to support his sick wife, six children, and numerous grandchildren in the United States. For the last twelve years, he has volunteered as the Sacristan at St. Paul the Apostle Roman Catholic Church. In that role, he was trusted to care for the church's sacred vessels and vestments. He passed this time without any criminal history or arrests until July 8, 2025.

2. On that day, Immigration and Customs Enforcement (“ICE”) detained Mr. Lucero Cohetero and approximately one hundred of his coworkers in a workplace raid. The agency subsequently released the eighty people it deemed as having valid immigration status, some of them United States citizens. ICE arrested Mr. Lucero Cohetero and confined him in an immigration detention center, where he remains today.

3. On August 7, 2025, the Immigration Court set bond for Mr. Lucero Cohetero’s case. Mr. Lucero Cohetero’s family has attempted to pay that bond, but ICE refused to accept payment. ICE has no lawful authority to refuse payment of Mr. Lucero Cohetero’s bond.

4. ICE’s continued detention of Mr. Lucero Cohetero therefore violates the Fifth Amendment Due Process Clause and the Administrative Procedures Act (“APA”).

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the present action pursuant to 28 U.S.C. § 2241, *et seq.* (habeas corpus); 28 U.S.C. § 1331 (federal question); 5 U.S.C. § 702 (waiver of sovereign immunity); 5 U.S.C. § 701 *et seq.* the (“APA”).; 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. § 2201 (Declaratory Judgment Act); and Art. 1, § 9, cl. 2 of the United States Constitution (Suspension Clause).

6. Venue is proper in this Court because Mr. Lucero Cohetero is detained at Delaney Hall Detention Facility (“Delaney Hall”), which is located in this district and because his immediate custodian is also located in this district.

7. As to Mr. Luero Cohetero’s APA claim, venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because the Respondents-Defendants Tsoukaris and Lyons are employees or officers of the United States, acting in their official capacities; a substantial part of the events or omissions giving rise to this action occurred in the District of New Jersey; and Mr. Lucero Cohetero is in custody within the District of New Jersey.

### **PARTIES**

8. Petitioner Guadalupe Lucero Cohetero has been detained by ICE since July 8, 2025. ICE detains him at Delaney Hall in Newark, New Jersey.

9. Respondent Warden is warden and administrator of Delaney Hall, where Mr. Lucero Cohetero is currently detained.<sup>1</sup> They are Mr. Lucero Cohetero’s immediate custodian. They sued in their official capacity.

10. Respondent John Tsoukaris is the Field Office Director of the ICE Newark Field Office and is the federal agent charged with overseeing all ICE detention centers in New Jersey, including Delaney Hall. Mr. Tsoukaris is a legal custodian of Mr. Lucero Cohetero and is sued in his official capacity.

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<sup>1</sup> Undersigned counsel has asked multiple employees at Delaney Hall for the name of the warden or person in charge. Each employee refused.

11. Respondent Todd M. Lyons is Acting Director of ICE. As the senior official performing the duties of Director of ICE, he is responsible for the administration and enforcement of the immigration laws and is legally responsible for pursuing any effort to confine, remove, accept bond payment for, and release of noncitizen; and as such is a custodian of Mr. Lucero Cohetero. He is sued in his official capacity.

### FACTUAL ALLEGATIONS

12. On July 8, 2025, ICE arrested Mr. Lucero Cohetero in a workplace raid at his place of employment, Alba Wine and Spirits in Edison, New Jersey. Dozens of armed, masked DHS agents detained approximately one hundred workers in a warehouse without knowing who they were or where they were from.

13. One worker reported that “the way ICE was standing, trying to barricade us, not letting us through. They were not interested.”<sup>2</sup> Another recounted, “[ICE] dragged me out of my car when I was in the middle of my break. They were pushing me, they were harassing me. When I told them to keep their distance, they pushed me on the floor and handcuffed me...They let me go because they had to, but they were just harassing people for no reason. People over here are only

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<sup>2</sup> Daria Miles, *Demonstrators demand release of 20 workers from ICE custody after raid at Edison warehouse*, ABC 7 Eyewitness News, Jul. 16, 2025, <https://abc7ny.com/post/edison-ice-raid-demonstrators-demand-release-20-workers-custody-nj-warehouse/17151599/>; *see also* Immigration and Customs Enf’t, Jul. 9, 2025, <https://www.ice.gov/news/releases/ice-arrests-20-illegal-aliens-during-worksite-inspection-new-jersey>.

working. Nobody is here doing anything bad.”<sup>3</sup> Only after checking the workers’ identifications did the agents allow the approximately eighty individuals it believed to have valid immigration status to leave.<sup>4</sup>

14. Afterwards, “ICE Newark and Customs and Border Patrol confirmed the agencies detained more than 100 people, arresting 20 of them from multiple South American countries, five of whom have already been deported.”<sup>5</sup>

15. ICE detained Mr. Lucero Cohetero and has held him at Delaney Hall ever since. The facility is plagued by allegations of substandard conditions. The people detained there report food shortages, contaminated water, denied access to family visitation, and a lack of basic medical care.<sup>6</sup>

16. Mr. Lucero Cohetero’s family has suffered immensely since his detention. His wife suffers from depression, anxiety, diabetes, and thyroid issues.

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<sup>3</sup> Chris Keating, *Around 15 people detained in ICE raid at Edison warehouse, workers say*, News 12 New Jersey, Jul. 8, 2025, <https://newjersey.news12.com/around-15-people-detained-in-ice-raid-at-edison-warehouse-workers-say>.

<sup>4</sup> See Keating, note 3, *supra*.

<sup>5</sup> See Miles, note 2, *supra*.

<sup>6</sup> Didi Martinez, *Immigrants in overcapacity ICE detention say they're hungry, raise food quality concerns*, Jul. 14, 2025, <https://www.nbcnews.com/news/us-news/immigrants-overcapacity-ice-detention-say-hungry-raise-food-quality-co-rcna214193>; Tracey Tully, *Inside the Tumult That Led 4 Men to Escape from a Migrant Facility*, *New York Times*, Jun. 14, 2025, <https://www.nytimes.com/2025/06/14/nyregion/newark-ice-detainees-escape.html>; Ricardo Kaulesar, *Before recent Delaney Hall uprising, detainees frequently complained about conditions*, *Bergen Record*, Jun. 18, 2025, <https://www.northjersey.com/story/news/2025/06/18/delaney-hall-history-conditions-newark-nj-ice-facility/84149059007/>. Rep. Watson Coleman Statement on Poor Conditions at Delaney Hall, *Food Shortages, Detainee Escapes*, Representative Bonnie Watson Coleman, Jun. 13, 2025, <https://watsoncoleman.house.gov/newsroom/press-releases/rep-watson-coleman-statement-on-poor-conditions-at-delaney-hall-food-shortages-detainee-escapes>.

She cannot work because of her condition. After ICE detained her husband, she has been unable to sleep through the night. Her doctor increased her dosage of antidepressant medications, but she will soon be unable to afford these medications because of the loss of his income.

17. If ICE does not release Mr. Lucero Cohetero soon, his son will have to drop out of school to work more hours to pay for the food, bills, and medications that his mother needs to survive.

18. Mr. Lucero Cohetero is currently in removal proceedings before the Immigration Court. The Immigration Court is part of the Department of Justice's Executive Officer of Immigration Review. The Immigration Court is responsible for determining whether ICE may remove noncitizens from the United States. In Mr. Lucero Cohetero's case, the Immigration Court is also responsible for determining whether he may be released from custody during the pendency of removal proceedings.

19. On August 7, 2025 the Immigration Court considered Mr. Lucero Cohetero's motion for bond redetermination, evaluated his dangerousness to the community and risk of flight, and ordered that Mr. Lucero Cohetero may be released upon payment of a \$7,500 bond.

20. Bond obligors may make bond payments to ICE via CeBONDS, the agency's centralized bond payment system. ICE describes CeBONDS as "a

web-based system that provides the public with an automated, Okta secured, online capability to make online requests to verify bond information, post cash immigration bonds for detained aliens, and enables ICE to send electronic notifications to cash bond obligors”.<sup>7</sup>

21. On August 7, 2025, the Envision Freedom Fund, a non-profit, CeBONDS registered nonprofit obligor, attempted to pay Mr. Lucero Cohetero’s bond via CeBONDS.

22. On August 8, 2025 at 1:39 p.m., ICE denied Envision Freedom Fund’s payment. ICE’s CeBONDS portal page for this payment reflects the denial reason: “DHS Appealing Bond.”

23. On August 8, 2025 at 4:18 p.m., ICE filed Form EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination with the Immigration Court, purportedly staying the court’s bond order pursuant to 8 C.F.R. § 1003.19(i)(2).

24. ICE has made no motion to stay the Immigration Court’s bond order with the Board of Immigration Appeals (“BIA”).

25. The BIA has not stayed the Immigration Court’s bond order on its own accord.

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<sup>7</sup> Post a Bond, Immigration and Customs Enf’t, updated Jul. 9, 2025, <https://www.ice.gov/detain/detention-management/bonds>

## **CLAIM FOR RELIEF**

### **COUNT ONE VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS**

26. Mr. Lucero Cohetero realleges and incorporates by reference each and every allegation contained above.

27. Freedom from government custody, detention, or other forms of physical restraint -- lies at the heart of the liberty that [Due Process] Clause protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). As such, a detained person has "a constitutionally protected liberty interest in exercising his bail option, once bail had been set, sufficient to trigger substantive due process protection." *Steele v. Cicchi*, 855 F.3d 494, 502 (3d Cir. 2017).

28. Generally, the government may detain an individual in the absence of a criminal conviction only where a court has determined that they present a danger to the community or an irredeemable flight risk. *Id.* These considerations do not apply once a court has set bail. *Id.*

29. The Immigration and Naturalization Act carves out some Constitutionally permissible exceptions to the general rule. First, the 8 U.S.C. 1226(c) mandates the detention of noncitizens "who fall into several enumerated categories involving criminal offenses and terrorist activities." *Jennings v. Rodriguez*, 583 U.S. 281, 289 (2018). Another statute, 8 U.S.C. § 1225(b)



mandates the detention "applies primarily to [noncitizens] seeking entry into the United States" who claim fear of return to their home country at a United States border. *Id.* at 297, 302. Finally, under 8 U.S.C. § 1231(a)(1)(A), DHS must detain a noncitizen for the first ninety days after a removal order becomes final. *Id.* at 298.

30. ICE detention of noncitizens in removal proceedings is generally governed by 8 U.S.C. § 1226(a). *Id.* at 285. Section 1226(a) grants the Attorney General discretion to determine whether a noncitizen should be released on bond or otherwise, pending removal proceedings. 8 U.S.C. § 1226(a). Noncitizens detained under 8 U.S.C. § 1226(a) are entitled to, like their criminally detained counterparts, a bond hearing whether an immigration judge determines whether the individual is "a flight risk or a danger to the community." *Gayle v. Johnson*, 81 F. Supp. 3d 371, 383 n.14 (D.N.J. 2015).

31. Regulations provide the government with two means by which it may stay the Immigration Judge's bond. First, the BIA may "stay the order of an immigration judge redetermining the conditions of custody of an alien when the Department of Homeland Security appeals the custody decision or on its own motion." 8 C.F.R. § 1003.19(i)(1). Such stays are not automatic. If the BIA does not stay the IJ's bond decision *sua sponte*, "DHS may seek a discretionary stay from the Board in connection with such an appeal at any time." *Id.*

32. ICE may also automatically stay the IJ's bond order in cases in which it initially determined that the noncitizen should not be released or should be released on a bond of over \$10,000. 8 C.F.R. § 1003.19(i)(2). In these cases, ICE may stay the order by "filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order." *Id.*

33. Here, the Immigration Court set bond in Mr. Lucero Cohetero's case after considering his dangerousness and flight risk. The Envision Freedom Fund attempted to pay that bond.

34. When the Envision Freedom Fund attempted to pay Mr. Lucero Cohetero's bond, ICE had not yet filed Form EOIR-43 with the Immigration Court.

35. At the time ICE denied the Envision Freedom Fund's payment of Mr. Lucero Cohetero's bond, ICE had not yet filed Form EOIR-43 with the Immigration Court.

36. The BIA has not issued any stay of the bond order.

37. Therefore, ICE denied Mr. Lucero Cohetero's payment of bail without any active stay. As such, their continued detention of Mr. Lucero Cohetero violates his Fifth Amendment due process rights.

**COUNT TWO**  
**VIOLATION OF FIFTH AMENDMENT**  
**RIGHT TO PROCEDURAL DUE PROCESS**

38. Mr. Lucero Cohetero realleges and incorporates by reference each and every allegation contained above.

39. Procedural due process requires a custody hearing before an independent and impartial adjudicator that is adhered to by the detainee's custodian. *See Marcello v. Bonds*, 39 U.S. 302, 307 (1955). In determining how much process is due noncitizens challenging ICE custody, courts apply the Supreme Court's *Mathews v. Eldridge* test, balancing "1) the private interest affected by the government action; 2) the risk that current procedures will cause an erroneous deprivation of the private interest, and the extent to which that risk could be reduced by additional safeguards; and 3) the government's interest in maintaining the current procedures, including the function involved and the fiscal and administrative burdens that the substitute procedural requirement would entail." *Ashley v. Ridge*, 288 F. Supp. 2d 662, 670 (D.N.J. 2003).

40. Mr. Lucero Cohetero's liberty interest is significant as "interest in remaining free from governmental restraint is of the highest constitutional import." *Id.* In addition, civilly detained individuals have an interest in nonpunitive conditions of confinement. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 211 (3d Cir. 2020). The lack of basic necessities and medical care at

Delaney Hall render Mr. Lucero Cohetero's detention punitive. Mr. Lucero Cohetero also has an interest in family integrity. *See Brown v. Daniels*, 290 F. App'x 467, 472 (3d Cir. 2008). DHS' stay provision is keeping Mr. Lucero Cohetero from his six children and sick wife. His wife is falling deeper into depression and his son will soon have to drop out of school to become her primary caretaker. As such, Mr. Lucero Cohetero's private interest is strong.

41. The risk of erroneous deprivation is also high as the stay provision therefore “permits an agency official who is also a participant in the adversarial process to unilaterally override the immigration judge's decisions.” *Gunaydin v. Trump*, No. 25-CV-01151 (JMB/DLM), 2025 WL 1459154, at \*8 (D. Minn. May 21, 2025); *see also Ashley*, 288 F. Supp. at 670. Under this provision, ICE may keep a noncitizen detained “without making any showing of dangerousness, flight risk, or any other factor justifying detention... [s]imply by fiat—without introducing any proof and without immediate judicial review.” *Mohammed H. v. Trump*, No. CV 25-1576 (JWB/DTS), 2025 WL 1692739, at \*5 (D. Minn. June 17, 2025) *see also* Order Granting Preliminary Injunction *Organista v. Sessions*, CV-17-04719-PHX-GMS (MHB), ECF No. 13 at \*4 (D. Ariz. Dec. 28, 2017) (Finding that the regulation “requires nothing more than a perfunctory and generic statement made by [ICE] in lieu of a neutral decisionmaker that an automatic stay is justified.”). This process “runs counter to the more typical process, in which a

stay pending appeal is deemed ‘an extraordinary remedy.’” *Gunaydin*, 2025 WL 1459154, at \*9 (citing *M.M.V. v. Barr*, 459 F. Supp. 3d 1, 4 (D.D.C. 2020)).

42. Additional safeguards would reduce the risk of erroneous deprivation as a neutral decisionmaker would be able to decide whether continued detention of Mr. Lucero Cohetero’ is warranted. These “procedural safeguards that exist within the Immigration Judge’s hearing.” *Ashley*, 288 F. Supp. 2d at 671. In addition, subsection 1 of the regulation “sets forth a procedure by which DHS may request an emergency stay of the immigration judge’s custody determination from the BIA” and “\expedited preliminary review to determine whether a stay is warranted based on the individual circumstances and merits of the case.” *Gunaydin*, 2025 WL 1459154, at \*9. Use of the 8 C.F.R. § 1003.19(i)(1) stay process would “cure the due process infirmities of § 1003.19(i)(2) while preserving the government’s interest in preventing an erroneous release.” *Id.*

43. The burden of additional safeguards to ICE is low. Even without an automatic stay, ICE may still apply for a discretionary stay pursuant to 8 C.F.R. § 1003.19(i)(1). *Id.* at \*10. In addition, DHS’ 8 C.F.R. § 1003.19 implementing regulations describe the automatic stay provision as a “limited measure” in the first place. *See Executive Office for Immigration Review; Review of Custody Determination*, 66 Fed. Reg. 54909 (Oct. 31, 2001). Finally, “an Immigration Judge has already made a bail determination and there is little reason to believe

that any additional burden would weigh upon the government as a result of allowing the Immigration Judge to maintain his decision.” *Ashley*, 288 F. Supp. at 671. Nor is there any significant risk to the public as Mr. Lucero Cohetero has absolutely no criminal history.

44. As such, ICE’s use of 8 C.F.R. § 1003.19(i)(2) to continue Mr. Lucero Cohetero’s detention deprives him of liberty without procedural due process.

**COUNT THREE**  
**VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**  
**ULTRA VIRES REGULATION**

45. Mr. Lucero Cohetero realleges and incorporates by reference each and every allegation contained above.

46. Under the Administrative Procedures Act, a court may "hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, [or] an abuse of discretion." 5 U.S.C. § 706(2).

47. The Court has authority to invalidate agency regulations that exceed the powers granted to by statute. \See *Shalom Pentecostal Church v. Acting Sec’y, Dep’t of Homeland Sec.*, 783 F.3d 156, 167 (3d Cir. 2015). A "statute's silence on a given issue does not confer gap-filling power on an agency unless the question is in fact a gap-an ambiguity tied up with the provisions of the statute." *Prestol Espinal v. Att’y Gen.*, 653 F.3d 213, 221 (3d Cir. 2011).

48. Section 1003.19(i)(2) is *ultra vires* and exceeds the authority granted to DHS by Congress in passing 8 U.S.C. § 1226. *See Zabadi v. Chertoff*, No. C 05-1796, 2005 WL 1514122 at \*1 (N.D. Cal. June 17, 2005).

49. Congress explicitly, in 8 U.S.C. § 1226(c), subjected certain classes of noncitizens in removal proceedings to mandatory detention. All other noncitizens in removal proceedings are entitled to an individualized bond determination by the immigration court and release should the noncitizen pay that bond. *See* 8 U.S.C. § 1226(a)

50. Nothing in 8 U.S.C. § 1226(a) authorizes the unilateral deprivation of an Immigrant Court ordered bond by ICE. As such, “the automatic-stay regulation...deprives the immigration court of its congressionally-conferred power to determine bond, and is therefore *ultra vires*.” *Zabadi*, 2005 WL 1514122 at \*1; *see also Torosyan v. Nielsen*, No. 2:18-CV-5873-PSG (SK), 2018 WL 5784708, at \*7 (C.D. Cal. Sept. 27, 2018), *report and recommendation adopted*, No. 218CV5873PSGSK, 2018 WL 6167918 (C.D. Cal. Oct. 26, 2018) (collecting cases).

51. As such, 8 C.F.R. § 1003.19(i)(2) is *ultra vires* and ICE’s continued detention of Mr. Lucero Cohetero under the regulation violates the Administrative Procedures Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioner prays that this Court grant the following relief:

- a) Assume jurisdiction over this matter;
- b) Order Respondents to show cause why the writ should not be granted “within three days unless for good cause additional time, not exceeding twenty days, is allowed,” and set a hearing on this Petition within five days of the return, pursuant to 28 U.S.C. § 2243;
- c) Grant this Writ and order Respondents to release Mr. Lucero Cohetero pursuant to the Immigration Court’s Bond Order;
- d) Declare that 8 C.F.R. § 1003.19(i)(2) is *ultra vires* and violates the Fifth Amendment;
- e) Vacate 8 C.F.R. § 1003.19(i)(2) pursuant to the Administrative Procedures Act;
- f) Award Petitioner-Plaintiff their costs and reasonable attorneys’ fees in this action under the Equal Access to Justice Act, as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified by law; and
- g) Grant any other and further relief which this Court deems just and proper.

Date: August 8, 2025

/s/ Jeremy Jong  
Jeremy Jong  
Al Otro Lado



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*Counsel for Petitioner*

**VERIFICATION BY SOMEONE ACTING  
ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: August 8, 2025

Respectfully submitted,

/s/ Jeremy Jong

Jeremy Jong

Pro Bono Counsel for Petitioner

**CERTIFICATE OF SERVICE**

I, undersigned counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Mail with Return Receipts to each of the following individuals:

Warden  
Delaney Hall Detention Facility  
451 Doremus Avenue  
Newark, New Jersey 07105

John Tsoukaris, Field Office Director  
U.S. Immigration and Customs Enforcement, Newark Field Office  
970 Broad St. 11th Floor  
Newark, NJ 07102

Alina Habba,  
U.S. Attorney c/o Civil Process Clerk,  
970 Broad Street, 7th Floor  
Newark, NJ 07102

Dated: August 8, 2025

/s/ Jeremy Jong

Jeremy Jong

Pro Bono Counsel for Petitioner